

Civil Liberties: Protecting Individual Rights

Essential Question

To what extent has the judiciary protected the rights of privacy, security, and personal freedom?

Section 1:

Due Process of Law

Section 2:

Freedom and Security of the Person

Section 3:

Rights of the Accused

Section 4:

Punishment

“My **belief** has always been . . . that **wherever** in this land any individual’s **constitutional rights** are being **unjustly denied**, it is the **obligation** of the federal government—at point of bayonet if necessary—to **restore** that individual’s constitutional **rights**.”

—Ronald Reagan

Photo: Statue of Lady Justice

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On the Go

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- Political Dictionary
- Audio Review
- Downloadable Interactivities

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Lesson Goals

SECTION 1

Students will . . .

- understand the importance of due process by analyzing examples of when due process was and was not followed and by considering how government might function without due process.
- evaluate how government balances its police power with individual freedoms by summarizing scenarios in which society’s well-being conflicts with a person’s rights.

SECTION 2

Students will . . .

- understand 4th Amendment guarantees against unreasonable search and seizure by discussing proper procedures of police officers and by completing a chart on Court decisions in related cases.
- identify how Supreme Court rulings have narrowed the meaning of the exclusionary rule by defining the rule and analyzing Court opinions related to it.

SECTION 3

Students will . . .

- identify the rights of people accused of crimes by note-taking, completing a tree diagram, and discussing a case related to habeas corpus.
- evaluate the guarantee against self-incrimination by participating in simulations and analyzing a case related to the Miranda rule.

SECTION 4

Students will . . .

- examine how the Court’s interpretation of “cruel and unusual punishment” has changed over time by analyzing court cases on the death penalty.
- analyze and evaluate arguments on the constitutionality of juvenile capital punishment by analyzing Supreme Court opinions and editorials on this issue.

DIFFERENTIATED INSTRUCTION KEY

Look for these symbols to help you adjust steps in each lesson to meet your students’ needs.

L1 Special Needs

L2 Basic

ELL English Language Learners

LPR Less Proficient Readers

L3 All Students

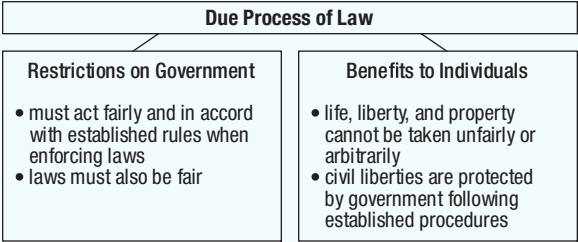
L4 Advanced Students

Pressed for Time

Explain that due process of law requires that government act fairly and in accordance with established rules. Have students create a timeline that charts the development and expansion of due process in the United States. Timelines should begin with the Civil War period and continue to the present. Tell students to scan the chapter to find key Supreme Court cases that addressed due process guarantees regarding security of the person and rights of the accused, and which limited both the Federal Government and State governments. Have students note the cases on their timelines, including explanations of their significance.

GUIDING QUESTION

Why is the concept of due process important to a free society?



Get Started

LESSON GOALS

- Students will . . .
- understand the importance of due process by analyzing examples of when due process was and was not followed and by considering how government might function without due process.
 - evaluate how government balances its police power with individual freedoms by summarizing scenarios in which society's well-being conflicts with a person's rights.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 130) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 131)

SKILLS DEVELOPMENT

DRAW INFERENCES AND CONCLUSIONS

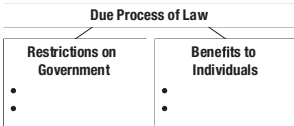
Before students begin the Core Worksheets in this lesson, you may want to review tips on drawing inferences and conclusions in the Skills Handbook, p. S19.

SECTION 1

Due Process of Law



Guiding Question
Why is the concept of due process important to a free society? Use a chart like the one below to take notes on due process.



- Political Dictionary**
- due process
 - procedural due process
 - substantive due process
 - police power
 - search warrant

- Objectives**
1. Explain the meaning of due process of law as set out in the 5th and 14th amendments.
 2. Define police power and understand its relationship to civil rights.
 3. Describe the right of privacy and its origins in constitutional law.

Image Above: Due process includes the forensic testing of evidence.

Did you know that DNA evidence has led to the reversal of more than 200 wrongful convictions in recent years? That the use of evidence drawn from the scientific study of body tissues has proved that all those persons were convicted, and served time in prison, for crimes they did *not* commit? Did you know that there is a strong likelihood that an untold number of innocent persons remain in prison today? As you will soon see, this point alone illustrates the importance of due process of law.

What Due Process Means

The Constitution contains two due process clauses. The 5th Amendment declares that the Federal Government cannot deprive any person of “life, liberty, or property, without due process of law.” The 14th Amendment places that same restriction on every one of the States—and, very importantly, on their local governments, as well. A thorough grasp of the meaning of these provisions is absolutely essential to an understanding of the American concept of civil liberties.

Fundamentally, the Constitution’s guarantee of **due process** means this: In whatever it does, government must act fairly and in accord with established rules. It may not act unfairly, arbitrarily, capriciously, or unreasonably.

The concept of due process began and developed in English and then in American law as a procedural concept. That is, it first developed as a requirement that government act fairly, or use fair procedures to enforce law.

Fair procedures are of little value, however, if they are used to administer unfair laws. The Supreme Court recognized this fact toward the end of the nineteenth century. It began to hold that due process requires that both the ways in which government acts *and* the laws under which it acts must be fair. Thus, the Court added the idea of substantive due process to the original notion of procedural due process.

In short, **procedural due process** has to do with the *how* (the procedures, the methods) of governmental action. **Substantive due process** involves the *what* (the substance, the policies) of governmental action.

Focus on the Basics

- FACTS:** • The 5th and 14th amendments guarantee that the National, State, and local governments cannot deprive a person of life, liberty, or property without due process of law. • Substantive due process guarantees that laws will be fair. • Procedural due process guarantees that laws will be enforced in a fair and equal manner. • The States’ reserved powers include the police power. • The Court has held that constitutional guarantees of due process create a right of privacy.
- CONCEPTS:** limited government, due process of law, individual rights and responsibilities
- ENDURING UNDERSTANDINGS:** • Due process requires government to act fairly and according to established rules. • When the use of police power conflicts with civil liberties, courts must balance society’s needs with individual freedoms.

It is impossible to define the two due process guarantees in exact and complete terms. The Court has consistently and purposely refused to give them an exact definition. Instead, it has relied on finding the meaning of due process on a case-by-case basis. The Court first described that approach in *Davidson v. New Orleans*, 1878, as the “gradual process of inclusion and exclusion, as the cases presented for decision shall require.”

Examples of Due Process Any number of cases may be used to illustrate these two elements of due process. Take a classic case, *Rochin v. California*, 1952, to exemplify procedural due process.

Rochin was a suspected narcotics dealer. Acting on a tip, three Los Angeles County deputy sheriffs went to his rooming house. They forced their way into Rochin’s room, found him sitting on a bed, and spotted two capsules on a nightstand. When one of the deputies asked, “Whose stuff is this?” Rochin popped the capsules into his mouth. Although all three officers jumped him, Rochin managed to swallow the pills.

The deputies took Rochin to a hospital, where his stomach was pumped. The capsules were recovered and found to contain morphine. The State then prosecuted and convicted Rochin for violating the State’s narcotics laws.

The Supreme Court unanimously held that the deputies had violated the 14th Amendment’s guarantee of procedural due process. Said the Court:

PRIMARY SOURCE

This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach’s contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw. . . .

—Justice Felix Frankfurter

The case *Pierce v. Society of Sisters*, 1925, illustrates substantive due process. In 1922, Oregon’s voters had adopted a new compulsory school-attendance law that required all persons between the ages of 8 and 16 to attend *public* schools. The law was purposely written to destroy private, especially parochial, schools in the State.

A Roman Catholic order challenged the law’s constitutionality, and the Supreme Court held that its provisions violated the 14th Amendment’s Due Process Clause. The Court did not find that the State had enforced the law unfairly. Rather, the Court held that the law itself, in its contents, “unreasonably interferes with the liberty of parents to direct

Due Process

The following limit is placed on the Federal Government in the **5th Amendment**, and on State and local governments in the **14th Amendment**:

Government cannot deprive any person of life, liberty, or property without following due process of law.

Both the **procedures** and the **laws** of government must be in accord with due process. **Why are procedural and substantive due process both necessary?**



PROCEDURAL Due Process

The procedures, the methods, the *how* of government action must be equally and justly applied.

SUBSTANTIVE Due Process

The substance, the meaning, the *what* of a law or action of government must be just.

Chapter 20 • Section 1 579

BELLRINGER

Write these examples of arbitrary laws and the following question on the board: **(1) Only students who drive red or blue cars can park in the school parking lot. (2) On Mondays and Wednesdays, brown-eyed students cannot eat in the cafeteria. (3) Police officers can search your home whenever they feel like it. What is wrong with these laws? Answer in your notebook.**

Teach

To present this topic using online resources, use the lesson presentations at PearsonSuccessNet.com.

REVIEW BELLRINGER ANSWERS

Ask students to share their answers to the Bellringer question. Students should infer that the laws are unfair and arbitrary. Then ask: **Why is it important that laws not only be fair but also consistent, regular, or uniform across all situations and classes of people?** (*Consistent, predictable laws and law enforcement procedures promote order and stability.*) **What prevents governments from passing unfair laws or applying laws in an arbitrary manner?** (*due process of law*)

L2 L3 Differentiate Have groups list characteristics of a fair law. (*applied equally regardless of race, gender, religious beliefs, or income; easy to understand; enforceable; not vague; clearly states what is and is not legal*) Then ask groups to write a law concerning curfew for teenagers, drug testing for athletes, or mandatory sentencing for criminals. When finished, have groups use their lists of fair characteristics to critique one another’s laws.

INTRODUCE DUE PROCESS

Explain that due process originated as early as 1215 in the Magna Carta. Display Transparency 20A, Protecting Individual Rights, and have a volunteer read aloud the quote. Then ask: **According to the document, what factors will determine a person’s imprisonment?** (*judgment by one’s peers or by the law of the land*) **How did government by “law of the land” differ from previous government?** (*Absolute monarchs ruled according to their whims, not by laws.*)

Have a student read aloud the 5th Amendment and Section 1 of the 14th Amendment. Ask: **What limits do the amendments place on government?** (*National and State governments cannot deprive any person of life, liberty, or property without following fair laws and procedures.*)

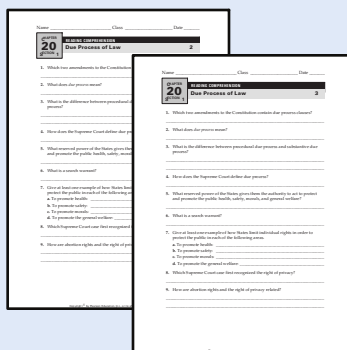
Answers

Analyzing Visuals to ensure not only that procedures are fair, but also that the laws they administer are fair

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 20, Section 1:

- L3** Prereading and Vocabulary Worksheet (p. 126)
- L3** Reading Comprehension Worksheet (p. 130)
- L2** Reading Comprehension Worksheet (p. 131)
- L3** Core Worksheet A (p. 132)
- L3** Core Worksheet B (p. 134)
- L3** Quiz A (p. 135)
- L2** Quiz B (p. 136)



L2 Differentiate Students who have difficulty grasping the concept of due process may find it easier to think of limits on government as the “law of the land.”

L2 ELL Differentiate Explain these words in the 5th and 14th amendments: *jeopardy* (danger or risk), *deprive* (remove or take away), *compensation* (payment or reimbursement), *abridge* (reduce or cut), *arbitrary* (random).

L3 Differentiate Have students consider what might result from the following actions *without* fair laws or due process of law: someone criticizes the government (*banishment, execution*); shoplifting (*hand cut off, other torture punishment exceeding the crime*); a suspect without an attorney is tried only by a judge, not by a jury (*sham trial with rigged witnesses*).

IDENTIFY DUE PROCESS PROCEDURES

Distribute the Chapter 20 Section 1 Core Worksheet A (Unit 5 All-in-One, p. 132). Students will identify due process procedures that were or were not followed in a trial.

Name _____ Class _____ Date _____

CHAPTER 20
SECTION 1

CORE WORKSHEET A
Due Process of Law **3**

Read the core due process procedures below. Then complete the steps that follow.

Core Due Process Procedures

Notice—After thorough investigation, the government must tell the accused the specific charges against him or her.

Hearing—The accused has the right to be heard in a trial before a jury of his or her peers. The accused has the right to have a lawyer prepare a defense.

Evidence—The accused is presumed innocent, and it is the government that must prove guilt beyond a reasonable doubt through evidence and witnesses. The accused has a right to face witnesses and ask questions about how the evidence or information was gathered.

Part 1 Read the information below about the 1976 trial of Henry Baker (not his real name). Then identify which of the core due process procedures listed above applies to each of the steps in this case.

1. The owner of a convenience store is shot and killed. Henry Baker, who was walking by the store at the time, is named the prime suspect.
2. A single eyewitness claims he heard one shotgun blast kill the store owner.
3. A sheriff's deputy introduces a spent shotgun shell found in Baker's car.
4. The local physician testifies that the autopsy shows the victim was killed by a single shotgun blast.
5. Baker claims he is innocent and was framed by a corrupt sheriff's department.
6. A jury convicts Baker, and he goes to prison.
7. Do you think due process was followed in Baker's trial? Explain.

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L2 Differentiate Have students complete the worksheet using the Think-Pair-Share strategy (p. T22).

Answers

Checkpoint the authority of each State to protect and promote the public health, safety, morals, and general welfare of its people

Interpreting Political Cartoons Possible answer: No. Due process guarantees a fair trial, not acquittal.

the upbringing and education of children under their control.

The 14th Amendment and the Bill of Rights Recall these crucial points from Chapter 19: The provisions of the Bill of Rights apply against the National Government *only*. However, the Supreme Court has held that the 14th Amendment's Due Process Clause includes within its meaning most of the protections set out in the Bill of Rights.

In a long series of decisions dating from 1925, the Court extended the protections of the Bill of Rights against the States through the 14th Amendment's Due Process Clause. The chart on page 549 lists those amendments that have been incorporated—and with them the four provisions in the Bill of Rights that have not been incorporated.

The key 1st Amendment cases were discussed in Chapter 19. Those involving the 4th through the 8th amendments are treated in Sections 2, 3, and 4 of this chapter.

compulsory
adj. forced, obligatory



► **Interpreting Political Cartoons** Is it possible that the prisoner's complaint is justified? Explain your answer.

The Police Power

In the federal system, the reserved powers of the States include the broad and important **police power**. The police power is the authority of each State to act to protect and promote the public health, safety, morals, and general welfare. In other words, it is the power of each State to safeguard the well-being of its people.

The Police Power and Civil Liberties The use of the police power often produces conflicts with civil liberty protections. When it does, courts must strike a balance between the needs of society, on the one hand, and of individual freedoms on the other. Any number of cases can be used to illustrate the conflict between police power and individual rights. Take as an example a matter often involved in drunk-driving cases.

Every State's laws allow the use of one or more tests to determine whether a person arrested and charged with drunk driving was in fact drunk at the time of the incident. Some of those tests are simple: walking a straight line or touching the tip of one's nose, for example. Some are more sophisticated, however, notably the breathalyzer test and the drawing of a blood sample.

Does the requirement that a person submit to such a test violate his or her rights under the 14th Amendment? Does the test involve an unconstitutional search for and seizure of evidence? Does it amount to forcing a person to testify against himself or herself (unconstitutional **compulsory** self-incrimination)? Or is that requirement a proper exercise of the police power?

Time after time, State and federal courts have come down on the side of the police power. They have supported the right of society to protect itself against drunk drivers and rejected the individual rights argument.

The leading case is *Schmerber v. California*, 1966. There, the Court found no objection to a situation in which a police officer had directed a doctor to draw blood from a drunk-driving suspect. The Court emphasized these points: The blood sample was drawn in accord with accepted medical practice. The officer had reasonable grounds

Background

MAGNA CARTA When rebellious barons forced King John to sign the Magna Carta in 1215, they intended to secure rights for the powerful families in feudal England—not for everyone. However, in negotiating the wording, they changed “any baron” to “any freeman.” This change, minor at the time, would later be used to apply the charter to broader society. In the 17th century, Edward Coke, an English lawyer, reinterpreted the Magna Carta, arguing that it established universal rights that kings and acts of Parliament could not void. American colonists wrote these views into the legal codes of the colonies. They cited the Magna Carta to condemn the Stamp Act as against “the natural rights of Englishmen.” In the Constitution, “all freemen” would become “we the people.” Just as the Magna Carta could not be canceled by later English laws, the U.S. Constitution would become “the Supreme Law of the Land.”

to believe that the suspect was drunk. Further, had the officer taken time to secure a **search warrant**—a court order authorizing a search—whatever evidence was present could have disappeared from the suspect's system.

Protecting the Public Legislators and judges have often found the public's health, safety, morals, and/or welfare to be of overriding importance. For example:

1. To promote health, States can limit the sale of alcoholic beverages and tobacco, make laws to combat pollution, and require the vaccination of schoolchildren.

2. To promote safety, States can regulate the carrying of concealed weapons, require the use of seat belts, and punish drunk drivers.

3. To promote morals, States can regulate gambling and outlaw the sale of obscene materials and the practice of prostitution.

4. To promote the general welfare, States can enact compulsory education laws, provide help to the medically needy, and limit the profits of public utilities.

Clearly, governments cannot use the police power in an unreasonable or unfair way, however. In short, they cannot violate the 14th Amendment's Due Process Clause.

The Right of Privacy

The constitutional guarantees of due process create a right of privacy—"the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy," *Stanley v. Georgia*, 1969.¹ It is, in short, "the right to be let alone."²

The Constitution makes no specific mention of the right of privacy, but the Supreme Court declared its existence in *Griswold v. Connecticut*, 1965. That case centered on a State law that outlawed birth-control counseling and prohibited the use of all birth-

control devices. The Court held the law to be a violation of the 14th Amendment's Due Process Clause—and noted that the State had no business policing the marital bedroom.

Roe v. Wade The most controversial applications of the right of privacy have come in cases that raise this question: To what extent can a State limit a woman's right to an abortion? The leading case is *Roe v. Wade*, 1973. There, the Supreme Court struck down a Texas law that made abortion a crime except when necessary to save the life of the mother.

In *Roe*, the Court held that the 14th Amendment's right of privacy "encompass[es] a woman's decision whether or not to terminate her pregnancy." More specifically, the Court ruled that:

1. In the first trimester of pregnancy (about three months), a State must recognize a woman's right to an abortion; it cannot interfere with medical judgments in that matter during that period.

2. In the second trimester, a State, acting in the interest of women who undergo abortions, can make reasonable regulations about how, when, and where abortions can be performed but cannot prohibit the procedure.

3. In the final trimester, a State, acting to protect the unborn child, can choose to prohibit all abortions except those necessary to preserve the life or health of the mother.

Challenges to Roe In several later cases, the Court rejected a number of challenges to its basic holding in *Roe*. As the composition of the Court has changed, however, so has the Court's position on abortion. That shift can be seen in the Court's decisions in recent cases on the matter.

In *Webster v. Reproductive Health Services*, 1989, the Court upheld two key parts of a Missouri law. Those provisions prohibit abortions, except those that preserve the



Promoting safety is one of the States' police powers. **In what ways do States promote morality?**

ANALYZE STATES' POLICE POWER

Organize students into pairs. Distribute the Chapter 20 Section 1 Core Worksheet B (Unit 5 All-in-One, p. 134), which asks students to analyze scenarios that pit individual rights against the public good. Discuss Situation 1 before pairs work independently to complete the worksheet.

Name _____ Class _____ Date _____	
CHAPTER 20 Section 1	CORE WORKSHEET B Due Process of Law 3

Listed below are actions that involve conflicts between the police power of government and the rights of individuals. For each situation, identify (a) the person representing the government's interest, and (b) the issue being addressed by the police power—health, safety, morals, and/or general welfare.

1. A principal suspends a student for five days from a public high school for disruptive behavior.
 - a. Representative of government: _____
 - b. Issue: _____
2. After two warnings, the director of a veterans' hospital fires an employee for smoking in a hospital bathroom.
 - a. Representative of government: _____
 - b. Issue: _____
3. A business owner reprimands a teenager for skateboarding on the busy sidewalk in front of his business in violation of a city ordinance.
 - a. Representative of government: _____
 - b. Issue: _____
4. Undercover police arrest operators of an illegal dog-fighting event, as well as the people who are betting on the dogs.
 - a. Representative of government: _____
 - b. Issue: _____
5. An environmental agency orders an oil company to pay thousands of dollars in damages to fishers, landowners, and businesses affected by a massive oil spill off the coast of the State.
 - a. Representative of government: _____
 - b. Issue: _____

Reflection Questions

6. Why do you think State and federal courts often issue decisions that support the use of the police power rather than individual rights? _____
7. How does due process help balance individual rights against the far greater power of the government? _____

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L2 ELL Differentiate Clarify for students that *police power* refers to the reserved power of the States, not to the actions of police officers.

L3 Differentiate Ask students to role play a conversation between an offender and a representative of the government's interest. Each should explain his or her side, and individuals should ask for explanations of their due process rights.

EXTEND THE LESSON

L3 Differentiate Have students research a case in this section. Ask them to draw a flowchart showing the due process procedures followed. Questions that could be answered in the flowchart include: What are the facts in the case? What due process rule, law, or policy was followed or violated? How was it violated? How was evidence or information gathered?

L4 Differentiate Have students research one of these cases and write a newspaper editorial explaining whether they agree or disagree with the Court's ruling: In *Chicago v. Morales*, 1999, the Court struck down an anti-gang loitering ordinance. In *Lee v. Kemna*, 2002, the Court ruled that the defendant had been denied his due process rights.

Answers

Caption States regulate gambling and outlaw the sale of obscene materials and the practice of prostitution.

Background

DNA AND DUE PROCESS After his conviction for rape, James Harvey maintained his innocence for more than ten years. In 2001, a federal judge ruled for the first time that Harvey, and other convicted felons, have a constitutional right to have their DNA tested to try to prove their innocence. An appeals court later overturned this ruling. Still, this case helped pave the way for The Innocence Protection Act (2001). This law was designed to reduce the risk that innocent people might be executed. Among other protections, it guarantees convicted offenders the right to DNA testing. But DNA can help convict as well as exonerate. Since passage of the act, law enforcement in some States has expanded the collection of DNA samples from not only convicted felons but also from arrestees. Critics argue that this practice erodes due process by denying citizens the right to keep their genetic information private.

1 *Stanley* involved the possession of obscene materials in one's own home. In the most recent right to privacy case, the Court struck down a Texas law that made sexual relations between consenting gay adults a crime, *Lawrence v. Texas*, 2003.

2 Justice Louis D. Brandeis, dissenting in *Olmstead v. United States*, 1928.

Assess and Remediate

L3 Have students write a journal entry explaining whether they agree or disagree with this statement: The right to due process has been called the greatest protection in the Constitution from the abuse of power by government.

L3 Collect Core Worksheet B and assess students' work.

L3 Assign the Section 1 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 135)

L2 Section Quiz B (Unit 5 All-in-One, p. 136)

Have students complete the review activities in the digital lesson presentation and continue their work in the Essential Questions Journal.

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Due Process of law (Questions 1, 2, 3)	Have students answer this question in a short essay: Why does a democracy need due process laws and procedures that define how government can use its power? (If democratic societies did not have such rules, political leaders could act arbitrarily, leading to unlimited government.)
Police power of government (Questions 4, 5, 6)	Ask students to make a two-column chart. In column one, have them list ten problems in the United States: social, environmental, economic, urban, rural, etc. In column two, next to each problem, have students list the police power that attempts to address that problem.

Answers

Checkpoint A State may place reasonable limits on a woman's right to have an abortion, but restrictions cannot impose an "undue burden" on this right.

Assessment Answers

- 1. Procedural due process and substantive due process act as safeguards on the rights of citizens and as restraints on the power of government officials. Life, liberty, and property cannot be taken away by unfair laws or unfair administration of laws.
- 2. (a) Government must act fairly and in accord with established rules and laws. (b) Justices do not see due process as absolute and unyielding; rather, they feel it is relative and should be decided on a case-by-case basis.
- 3. (a) procedural: refers to the how (the

procedures, methods) of government action; substantive: refers to the what (the substance, policies) of government action (b) In Rochin v. California, the Court held that the police procedures to obtain evidence were illegal. In Pierce v. Society of Sisters, the law itself was declared unfair.

4. (a) the authority to protect and promote public health, safety, morals, and general welfare (b) When using police power to protect society, States cannot violate the due process rights of individuals.

- 5. Possible answers: Yes, protection of morals falls within a State's police power. No, right of privacy limits the right of government to deem actions immoral.
 - 6. (a) "the right to be let alone" (b) Answers will vary.
- QUICK WRITE Refer students to the Web site "Oyez: U.S. Supreme Court Media" to help them write their case summaries.

Checkpoint How has the Court modified its Roe v. Wade ruling in later decisions?

mother's life or health, (1) in any publicly operated hospital or clinic in that State, and (2) when the mother is 20 or more weeks pregnant and tests show that the fetus is viable (capable of sustaining life outside the mother's body).

Two cases in 1990 addressed the issue of minors and abortion. In those cases, the Court said that a State may require a minor (1) to inform at least one parent before she can obtain an abortion, Ohio v. Akron Center for Reproductive Health, and (2) to tell both parents of her plans, except in cases where a judge gives permission for an abortion without parental knowledge, Hodgson v. Minnesota.

The Court's most important decision on the issue since Roe v. Wade came in Planned Parenthood of Southeastern Pennsylvania v. Casey in 1992. There, the Court announced this rule: A State may place reasonable limits on a woman's right to have an abortion, but these restrictions cannot impose an "undue burden" on her choice of that procedure.

In Casey, the Court applied that new standard to Pennsylvania's Abortion Control Act. It upheld several sections of the law, finding that they did not place "a substantial obstacle in the path of a woman seeking an abortion of a non-viable fetus." Those provisions, it said, do not impose an "undue burden" on a woman's choice.

The Supreme Court did strike down another key part of the Pennsylvania law in Casey, however. That provision required that a married woman tell her husband of her plan to have an abortion. That requirement, said the Court, did indeed amount to an "undue burden."

Recent Cases The High Court has decided only two abortion cases since 1992. Its 5-4 vote in the most recent one effectively overturned its 5-4 decision in the earlier case. Together, the two cases underscore the impact that changes in the composition of the Court can have on the outcome of cases that come before it.

In Gonzales v. Carhart, 2007, the justices applied Casey's "undue burden" rule to an act of Congress, the Partial Birth Abortion Ban Act of 2003, and found it constitutional. That statute prohibits a particular method of abortion, a medical procedure that opponents of abortion call "partial birth abortion." In fact, that operation had been performed in very few instances.

In the earlier case, Stenberg v. Carhart, 2000, the Court had applied Casey to strike down a Nebraska law that also banned partial birth abortions, and in language very nearly identical to that used by Congress when it passed the federal law in 2003.

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

SECTION 1 ASSESSMENT

- 1. Guiding Question Use your completed graphic organizer to answer this question: Why is the concept of due process important to a free society?
- Key Terms and Comprehension
- 2. (a) What does the phrase due process of law mean? (b) Why has the Supreme Court purposefully not defined due process exactly?
- 3. How do procedural due process and substantive due process differ?
- 4. (a) What is the police power reserved to the States? (b) What is the relationship between the police power and due process of law?
- Critical Thinking
- 5. Draw Conclusions Considering the constitutional right of privacy, is it proper for a State to use its police power to protect and promote morals among its citizens? Explain your answer.
- 6. Demonstrate Reasoned Judgment The right of privacy is not found in the Constitution. (a) How did Justice Brandeis define the right of privacy? (b) Do you think a constitutional amendment is needed to guarantee an individual's right to privacy? Why or why not?

Quick Write Research Essay: Choose a Topic Scan the chapter for two or three Supreme Court cases. Research the cases online, and write a summary paragraph of each case that includes the facts and issues. Select the case that most interests you.

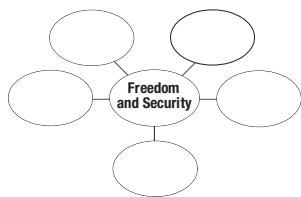
SECTION 2

Freedom and Security of the Person



Guiding Question

How does the Constitution protect the freedom and security of the person? Use a concept web to take notes on the section.



Political Dictionary

- involuntary servitude
- discrimination
- writs of assistance
- probable cause
- exclusionary rule

Objectives

1. Outline Supreme Court decisions regarding slavery and involuntary servitude.
2. Explain the intent and application of the 2nd Amendment's protection of the right to keep and bear arms.
3. Summarize the constitutional provisions designed to guarantee security of home and person.

Image Above: Police must have probable cause when they stop a vehicle.

The Constitution of the United States is, in very large part, a statement of limited government. Many of the restrictions it puts on governmental power are intended to protect the right of every American to be free. That is, those restrictions guard the right of individuals to be free from physical restraints, to be secure in their persons, and to be secure in their homes.

Slavery and Involuntary Servitude

The 13th Amendment was added to the Constitution in 1865, ending over 200 years of slavery in America. Section 1 of the amendment declares: "Neither slavery nor involuntary servitude, . . . shall exist within the United States, or any place subject to their jurisdiction." Importantly, Section 2 of this amendment gives Congress the expressed power "to enforce this article by appropriate legislation."

Until 1865, each State could decide for itself whether to allow slavery. With the 13th Amendment, that power was denied to them, and to the National Government, as well.

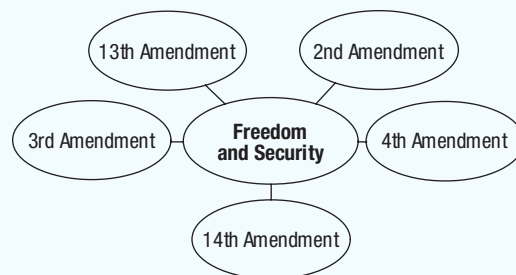
The 13th Amendment: Section 1 As a widespread practice, slavery disappeared in the United States more than 140 years ago. There are still occasional cases of it, however. Most often, those cases have involved **involuntary servitude**—that is, forced labor. An 1867 federal law, the Anti-Peonage Act, makes it a crime to force someone to work for another in order to fulfill a contract or satisfy a debt. Several times, the Supreme Court has struck down State laws making it a crime for any person to fail to work after having received money or other benefits by promising to do so.

The 13th Amendment does not forbid all forms of involuntary servitude, however. Thus, in 1918, the Supreme Court drew a distinction between "involuntary servitude" and "duty" in upholding the constitutionality of the selective service system (the draft).³ Nor does imprisonment for crime violate the amendment; and those who are convicted of crime can be forced to work. Finally, note this important point: Unlike any other provision in the Constitution,

³ *Selective Draft Law Cases*, 1918.

GUIDING QUESTION

How does the Constitution protect the freedom and security of the person?



Get Started

LESSON GOALS

Students will . . .

- understand 4th Amendment guarantees against unreasonable search and seizure by discussing proper procedures of police officers and by completing a chart on Court decisions in related cases.
- identify how Supreme Court rulings have narrowed the meaning of the exclusionary rule by defining the rule and analyzing Court opinions related to it.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 137) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 139)

SKILLS DEVELOPMENT

DECISION MAKING

To practice decision making in this section, use the Chapter 20 Skills Worksheet (Unit 5 All-in-One, p. 142). You may teach the skill explicitly before students do the Core Worksheet. For L2 and L1 students, assign the adapted Skill Activity (Unit 5 All-in-One, p. 143).

Focus on the Basics

FACTS: • The 13th Amendment prohibits slavery and involuntary servitude. • The 2nd Amendment preserves the right of States to keep militias. • The 4th Amendment prohibits unreasonable searches and seizures. • The Supreme Court adopted the controversial exclusionary rule, which says that evidence gained as the result of an illegal act by police cannot be used in court.

CONCEPTS: due process of law, individual rights and responsibilities, limited government

ENDURING UNDERSTANDINGS: • The 4th Amendment protects one from arbitrary searches and seizures. It requires police officers, except in special circumstances, to have a search warrant that was obtained with probable cause.

BELLRINGER

Display Transparency 20B, Search-and-Seizure Scenario, which describes a search-and-seizure situation. Have students answer the question in their notebooks.

Teach

To present this topic using online resources, use the lesson presentations at PearsonSuccessNet.com.

DISCUSS BELLRINGER ANSWERS

Discuss students' answers to the Bellringer question. Explain that the scenario is based on *Illinois v. Wardlow*, 2000. The State supreme court ruled that the stop and arrest had violated Wardlow's 4th Amendment rights. Upon appeal, however, the Supreme Court ruled that flight can be an important factor in deciding whether police have "reasonable suspicion" to stop a suspect. The Court also noted that flight from the police will not always justify a stop or that it will never do so. Ask students whether they agree or disagree with the Court's decision, and why.

INTRODUCE THE 4TH AMENDMENT

Ask a student to read the 4th Amendment aloud. Tell students that in this lesson, they will look at the rules and standards that the Supreme Court uses to examine the 4th Amendment rights of citizens and the responsibility of police to use proper procedures in search and seizure cases.

L2 ELL Differentiate As students read the 4th Amendment, point out that the prefix *un-* means "not." Write the word *unreasonable* on the board and ask students to explain what it means. (You also may want to explain that *seizure* in this case means "to arrest or detain.") Ask: **What is an unreasonable search and seizure?** (*one in which the police search a suspect or take the suspect's belongings without a warrant or without adequate reason for believing that a crime is about to be committed*)

Government online

All print resources are available on the Teacher's Resource Library CD-ROM and online at PearsonSuccessNet.com.

Answers

Caption The selective service system may draft people into military service; convicts can be forced to work.

the prohibitions in the 13th Amendment cover the conduct of private individuals as well as the behavior of government.

The 13th Amendment: Section 2 Shortly after the Civil War, Congress passed several civil rights laws based on the 13th Amendment. The Supreme Court, however, sharply narrowed the scope of federal authority in several cases, especially the *Civil Rights Cases*, 1883. In effect, the Court held that racial **discrimination** (prejudice, unfairness) against African Americans by private individuals was allowed. Discrimination, ruled the Court, did not place the "badge of slavery" on African Americans nor keep them in servitude.

As a result, Congress soon repealed most of the civil rights laws based on the 13th Amendment. The enforcement of the few laws that remained was at best unimpressive. For years, it was generally thought that Congress did not have the power, under either the 13th or 14th Amendment, to act against those who practiced race-based discrimination.

Nearly a century later, however, in *Jones v. Mayer*, 1968, the Supreme Court breathed new life into the 13th Amendment. The case centered on one of the post-Civil War acts Congress had not repealed. Passed in 1866, that almost-forgotten law provided in part that:

PRIMARY SOURCE

[All] citizens of the United States; . . . of every race and color, . . . shall have the same right, in every State and Territory of the United States, . . . to inherit, purchase, lease, sell, hold, and convey real and personal property, . . . as is enjoyed by white citizens, . . .

— Civil Rights Act of 1866

The 13th Amendment abolished slavery in 1865. **What types of involuntary servitude are permitted today?**



Jones, an African American, had sued because Mayer had refused to sell him a home, solely because of his race. Mayer contended that the 1866 law was unconstitutional, since it sought to prohibit private racial discrimination.

The Supreme Court upheld the 1866 law, declaring that the 13th Amendment abolished slavery and also gave Congress the power to abolish "the badges and incidents of slavery." Said the Court:

PRIMARY SOURCE

At the very least, the freedom that Congress is empowered to secure under the 13th Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live.

—Justice Potter Stewart

The Court affirmed that decision in several later cases. Thus, in *Runyon v. McCrary*, 1976, two private schools had refused to admit two African American students. By doing so, the schools had refused to enter into a contract of admission—a contract they had advertised to the general public. The Court found that the schools had violated another provision of the 1866 law, providing that: "[All] citizens of the United States, . . . of every race and color, . . . shall have the same right, . . . to make and enforce contracts . . . as is enjoyed by white citizens. . . ."

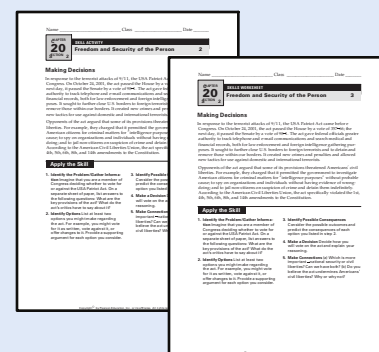
The Court has also ruled that the Civil Rights Act of 1866 protects all "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics"—for example Jews, *Shaare Tefla Congregation v. Cobb*, 1987, and Arabs, *St. Francis College v. Al-Khazraji*, 1987.

More recently, the Court has backed off a bit. In *Patterson v. McLean Credit Union*, 1989, it declared that although the 1866 law does prohibit racial discrimination in a contract of employment, any on-the-job discrimination should be handled in accord with the Civil Rights Act of 1964. (See Chapter 21.) Nevertheless, the Court has several times held that the 13th Amendment gives Congress

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 20, Section 2:

- L3** Reading Comprehension Worksheet (p. 137)
- L2** Reading Comprehension Worksheet (p. 139)
- L3** Core Worksheet (p. 141)
- L3** Skills Worksheet (p. 142)
- L2** Skill Activity (p. 143)
- L3 L4** Extend Worksheet (p. 144)
- L3** Quiz A (p. 146)
- L2** Quiz B (p. 147)



significant power to attack “the badges and incidents of slavery,” from whatever source they may come.

Right to Keep and Bear Arms

The 2nd Amendment was added to the Constitution to protect the right of each State to keep a militia. The amendment’s aim was to preserve the concept of the citizen-soldier. The 2nd Amendment reads:

FROM THE CONSTITUTION

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

What, exactly, do these words mean? Do they protect *only* the right of each State to keep a militia, especially against encroachments by the Federal Government? Or, does the 2nd Amendment do that *and also* give to individuals a right to keep and bear arms—just as, say, the 1st Amendment protects free speech?

For decades, the Court refused to accept the latter interpretation. In its one 2nd Amendment ruling, in *United States v. Miller*, 1939, the Court rejected the individual right argument. It upheld a section of the National Firearms Act of 1934 that made it a crime to ship sawed-off shotguns or submachine guns across State lines unless the shipper had a federal license to do so. The Court said that it could find no valid link between the shotgun involved in the case and “the preservation . . . of a well-regulated militia.”

In 2008, however, the holding in *Miller* was effectively overturned, 5–4, in *District of Columbia v. Heller*. There, the Court found the District’s very strict gun control ordinance unconstitutional. It ruled, for the first time, that the 2nd Amendment forbids “the absolute prohibition of handguns held and used for self-defense in the home.”

The Court did say, however, that *Heller* does not overrule “long-standing prohibitions on the possession of firearms by felons or the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing

conditions and qualifications on the commercial sale of arms.”

Clearly, over the next several years both federal and State courts will handle any number of cases challenging the many State and federal laws that now limit the right to keep and bear arms. Remember, the Supreme Court has never found that the 14th Amendment’s Due Process Clause covers the 2nd Amendment—a fact that will surely affect those cases.

Security of Home and Person

The 3rd and 4th amendments say that government cannot violate the home or person of anyone in this country without just cause.

The 3rd Amendment This amendment forbids the quartering (housing) of soldiers in private homes in peacetime without the owner’s consent and not in wartime except “in a manner to be prescribed by law.” The guarantee was added to prevent what had been British practice in colonial days.⁴ The 3rd Amendment has had little importance since 1791 and has never been the subject of a Supreme Court case.

The 4th Amendment The 4th Amendment also grew out of colonial practice. It was designed to prevent the use of **writs of assistance**—blanket search warrants with which British customs officials had invaded private homes to search for smuggled goods.

Each State constitution contains a similar provision. The guarantee also applies to the States through the 14th Amendment’s Due Process Clause. Unlike the 3rd Amendment,

⁴ Recall that among the king’s many “repeated injuries and usurpations [seizures]” set out in the Declaration of Independence was that of “quartering large bodies of troops among us.” See page 45.



This statue, called *The Minuteman*, honors the colonial militia. **Why was the 2nd Amendment added to the Constitution?**

encroachment
n. intrusion, invasion

COVER SEARCH-AND-SEIZURE BASICS

Point out that 4th Amendment search and seizure restrictions apply to law enforcement officials. Ask:

- **How do warrants protect the rights of citizens against unreasonable search and seizure?** (*They reduce the chance that law enforcement will act arbitrarily or make a mistake in the person, place, or thing to be searched or seized.*)
- **Why do you think the Supreme Court uses the principle of probable cause to analyze search and seizure cases?** (*Probable cause provides standards for police conduct and admissible evidence, which support fair courts, trials, and procedures.*)
- **How does the requirement to show probable cause limit police in search and seizure actions?** (*Probable cause states that a warrant can be obtained only when there are reasonable grounds to believe that a crime has been or is about to be committed, and the person, place, or thing to be searched or seized is related to that crime.*)

Explain that courts usually decide if a search was “reasonable” by looking at the evidence that was available to police at the time of the incident and by asking these questions:

1. Did the police have enough evidence to justify stopping the suspect?
2. Was the scope of the police search reasonably related to the suspected crime? For example, police looking for a stolen car would not need to look inside the suspect’s home or conduct a “pat-down” or body search.

L2 Differentiate Ask students to consider types of behavior that would lead police to have a reasonable suspicion that a crime has occurred or is about to occur. Refer students to the “From the Constitution—4th Amendment” feature in this section of the text. After students read the feature, have them complete this prompt: “I was surprised to learn that . . . ”

Background

WRITS OF ASSISTANCE By the early 1700s, the New England colonies had a thriving rum trade. To make the rum, they imported molasses from the British, French, and Spanish islands in the West Indies. To raise money and force the colonies to buy only from British growers, Parliament passed the Molasses Act in 1733, placing a heavy tax on foreign molasses. The colonists avoided the tax by smuggling the less-costly French and Spanish molasses. At first, the British made little effort to enforce the act. In 1764, realizing the extent of lost revenue, Parliament passed the Sugar Act, with strong enforcement measures. Britain issued writs of assistance, allowing customs agents unlimited power to search homes, ships, and warehouses for smuggled goods. The colonists challenged these writs in court in all 13 colonies. This strong opposition led the Framers to ban general warrants in the 4th Amendment.

Answers

Caption to protect the right of each State to maintain a militia

DISTRIBUTE CORE WORKSHEET

Organize students into five groups. Distribute the Chapter 20 Section 2 Core Worksheet (Unit 5 All-in-One, p. 141), which asks students to summarize Supreme Court rulings in search and seizure cases, to evaluate each ruling’s impact on 4th Amendment rights, and to decide whether they agree with the decisions.

Name _____ Class _____ Date _____

CHAPTER 20

CORE WORKSHEET

Section 2

Freedom and Security of the Person

3

Complete the chart below. Describe the decision of the Court in each case, state whether the ruling limits or supports the 4th Amendment rights of citizens, and explain whether your group agrees or disagrees with the Court’s ruling and why.

Case	Supreme Court’s Decision and Reasoning	Limits or Supports 4th Amendment Rights?	Agree or Disagree With Court’s Decision? Why?
1. <i>Florida v. J.L.</i> , 2000			
2. <i>Minnesota v. Carter</i> , 1999			
3. <i>California v. Acevedo</i> , 1991			
4. <i>Carroll v. United States</i> , 1925			
5. <i>Illinois v. Caballes</i> , 2005			

Critical Thinking

1. Why do you think Supreme Court justices have produced split decisions in many search and seizure cases?

2. Why is it important that you know and understand the information in the chart above?

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L2 LPR Differentiate Have each group complete one case on the chart and explain it to the class.

DEFINE EXCLUSIONARY RULE

Ask students to define the exclusionary rule. (*Evidence gained by police as the result of an unreasonable or illegal act cannot be used at the trial of the person from whom it was seized.*) Ask: **Is the exclusionary rule found in the Constitution?** (*It is not. The Supreme Court developed this rule through its decisions over the years in a wide variety of cases.*) **What is the purpose of the exclusionary rule?** (*to prevent law enforcement officers from obtaining evidence illegally*)

L2 ELL Differentiate Ask students for synonyms of *exclude*. (*keep out, reject, prevent*) Then ask students why this rule is called the exclusionary rule. (*It rejects unlawfully obtained or tainted evidence.*) Ask: **What does the word *tainted* mean?** (*damaged or rotten*) **What does “tainted evidence” refer to?** (*evidence that has been illegally gathered without a warrant or probable cause*)

Answers

Constitutional Principles Judicial review has helped define what constitutes *probable cause* and *reasonable suspicion*, including fleeing from police, casing a store, and an officer’s belief that a person is armed and dangerous.

586 Civil Liberties: Protecting Individual Rights

4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FROM THE CONSTITUTION

Probable Cause The 4th Amendment holds that police must show probable cause to obtain a search warrant. However, officers may stop and frisk a person without a warrant if they have a reasonable suspicion that a crime is about to be committed. What constitutes *probable cause* and *reasonable suspicion*? Chief Justice William Rehnquist answered that question this way: “They are commonsense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” Actions that the Court has accepted as justifying a stop and frisk include fleeing from the police, “casing” a store, and an officer’s belief that a person is armed and dangerous.

Constitutional Principles How has the principle of judicial review changed the scope of probable cause?

▲ The Supreme Court has ruled that “a police officer’s decision [to stop and frisk] must be based on more than a hunch or speculation,” *State of Arizona v. Gant*, 1994.

the 4th Amendment has proved a highly important guarantee. See the text of the 4th Amendment above.

Probable Cause The basic rule laid down by the 4th Amendment is this: Police officers have no general right to search for evidence or to seize either evidence or persons. Except in special circumstances, they must have a proper warrant (a court order). That warrant must be obtained with **probable cause**—that is, a reasonable suspicion of crime.

Florida v. J.L., 2000, illustrates the rule. There, Miami police received a tip that a teenager was carrying a concealed weapon. Two officers went to the bus stop where the tipster said the young man could be found. The police located him, searched him, pulled a gun from his pocket, and arrested him.

The Court held that the police acted illegally because they did not have a proper warrant. All they had was an anonymous tip,

unsupported by any other evidence. Their conduct amounted to just the sort of thing the 4th Amendment was intended to prevent.

Police do not always need a warrant, however—for example, when evidence is “in plain view.” Thus, the Court upheld a search and seizure involving two men who were bagging cocaine. A policeman spotted them through an open window, entered the apartment, seized the cocaine, and arrested them. The Court upheld their conviction, rejecting a claim to 4th Amendment protection, *Minnesota v. Carter*, 1999.

Many 4th Amendment cases are complicated. In *Lidster v. Illinois*, 2004, for example, the Court upheld the use of so-called “informational roadblocks.” In 1997, police had set up barriers on a busy highway near Chicago, hoping to find witnesses to a recent hit-and-run accident. When Robert Lidster was stopped, an officer smelled alcohol on him. Lidster failed several sobriety tests and

586 Civil Liberties: Protecting Individual Rights

Supreme Court Notes

NIX V. WILLIAMS A young girl disappeared from a YMCA. After finding items of her clothing several miles away, police organized 200 volunteers to search the area. Meanwhile, Robert Williams surrendered to local police. In conversing with the officer on the drive back to the city, without an attorney present, Williams gave information leading officers to the girl’s body. Williams was convicted. On appeal, Williams’ lawyer argued to exclude the body as evidence because Williams’ statement was illegally obtained. The Supreme Court ruled the evidence was admissible, because the volunteers would have found the body without the statement. “If the prosecution can establish . . . that the information ultimately or inevitably would have been discovered by lawful means—here, the volunteers’ search—then . . . the evidence should be received.” This ruling established the inevitable discovery exception.

was arrested on a drunk-driving charge. Lidster's attorney filed a motion to quash (set aside) that arrest. The lawyer argued that Lidster was forced to stop by officers who, before they stopped him, had no valid reason (no probable cause) to believe that he had committed any crime.

Lidster lost that argument. The Court upheld both his conviction and the use of informational roadblocks. Lidster had simply run afoul of the long arm of coincidence.

Arrests An arrest is the seizure of a person. When officers make a lawful arrest, they do not need a warrant to search “the area from within which [the suspect] might gain possession of a weapon or destructible evidence.”⁵ In fact, most arrests take place without a warrant. Police can arrest a person in a public place without one, provided they have probable cause to believe that person has committed or is about to commit a crime.⁶

Illinois v. Wardlow, 2000, illustrates this point. There, four police cars were patrolling a high-crime area in Chicago. When Wardlow spotted them, he ran. An officer chased him down an alley, caught him, and found that Wardlow was carrying a loaded pistol. The Court held, 5–4, that Wardlow's behavior—his flight—gave the police “common sense” grounds on which to believe that he was involved in some criminal activity. (Note, however, that the Court did not hold that police have a blanket power to stop anyone who flees at the sight of a police officer.)

When, exactly, does the 4th Amendment protection come into play? The Court has several times held that this point is reached “only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen,” *Terry v. Ohio*, 1968.

Automobiles The Court has long had difficulty applying the 4th Amendment to

automobiles. It has several times held that an officer needs no warrant to search an automobile, a boat, an airplane, or some other vehicle, when there is probable cause to believe that it is involved in illegal activities—because such a “movable scene of crime” could disappear while a warrant was being sought.

Carroll v. United States, 1925, is an early leading case on the point. There, the Court emphasized that “where the securing of a warrant is reasonably practicable, it must be used, In cases where seizure is impossible except without a warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.”

The Court overturned a long string of automobile search cases in 1991. Before then, it had several times held that a warrant was usually needed to search a glove compartment, a paper bag, luggage, or other “closed containers” in an automobile. But, in *California v. Acevedo*, 1991, the Court set out what it called “one clear-cut rule to govern automobile searches.” Whenever police lawfully stop a car, they do not need a warrant to search anything in that vehicle that they have reason to believe holds evidence of a crime. “Anything” includes a passenger's belongings, *Wyoming v. Houghton*, 1999.

Police, upon making a routine traffic stop, do not need to secure a warrant in order to use a trained dog to sniff around (search) the outside of a car for narcotics, *Illinois v. Caballes*, 2005. Most recently, however, the Court has held that when officers make a traffic stop, the Constitution protects passengers as well as drivers against an illegal search or seizure, *Brendlin v. California*, 2007. When a car is stopped, said the Court, both driver and passenger are in police control and neither of them can be searched without probable cause.

The Exclusionary Rule

The heart of the guarantee against unreasonable searches and seizures lies in this question: If an unlawful search or seizure does occur, can that “tainted evidence” be used in court? If so, the 4th Amendment offers no real protection to a person accused of crime.

Checkpoint
What rule regarding automobile searches was established in *California v. Acevedo*?

IDENTIFY EXCLUSIONARY RULE LIMITS

Read aloud the following situations regarding the exclusionary rule. Have students raise their hands if they think the statements are true. You may want to have students skim the text and identify the specific cases as you read the statements.

- Police may introduce evidence gathered by illegal means, if they can prove that they eventually would have found this evidence legally. (*True*—*Nix v. Williams*)
- Evidence can be admissible if it was obtained by police officers who thought they had a valid search warrant but which was later found to be faulty. (*True*—*United States v. Leon*)
- A warrantless search for a specific item turns up other, different illegal materials, which can be used at a trial. (*False*—*Mapp v. Ohio*)
- Tainted evidence found through an honest mistake is admissible in court. (*True*—*Maryland v. Garrison*)
- Evidence obtained by police who did not knock before forcing their way into a residence can still be used in a trial. (*True*—*Hudson v. Michigan*) See the political cartoon mini-lesson.

L2 LPR Differentiate Display Transparency 20C, Exceptions to the Exclusionary Rule, and discuss each limit on the exclusionary rule as the statements above are read. Less-proficient readers may be prompted to contribute by guiding them to complete a diagram or flowchart for each case.

⁵ This rule was first laid down in *Chimel v. California*, 1969.

Chimel was arrested, in his home, on a burglary charge and police searched for evidence of his stealing.

⁶ A person arrested without a warrant must be brought promptly before a judge for a probable cause hearing. In *County of Riverside v. McLaughlin*, 1991, the Court held that “promptly” means within 48 hours.

tainted
adj. spoiled, tarnished, flawed

Political Cartoon Mini-Lesson

Display Transparency 20D, 4th Amendment Rights, about the knock-and-announce rule. Ask: **Who are the two men, and what are they preparing to do?** (*police officers; break down the door of someone's home*) **Which case is depicted in this cartoon?** (*Hudson v. Michigan*, 2006) **How did the Court rule on the case?** (*Evidence seized without giving prior notice is still admissible in a trial.*) **What was the Court's reasoning behind its decision?** (*The knock-announce-wait rule is not intended to give people time to hide evidence.*) **The cartoonist does not show a search warrant. Does that affect the way you interpret the Court's ruling? Explain.** (*Leaving out the search warrant makes the actions of the police officers illegal and might make the viewer more likely to disagree with the Court's decision. The police in this case did have a search warrant, however.*)

Answers

Checkpoint Whenever police lawfully stop a car, they do not need a warrant to search anything in that vehicle that they have reason to believe holds evidence of a crime.

EXTEND THE LESSON

L3 L4 Differentiate Distribute the Chapter 20 Extend Worksheet (Unit 5 All-in-One, p. 144), which describes a search and seizure case that took place in a public high school in 1980. Begin by asking students to identify the constitutional issue in the case. After studying the case, students can discuss how they think the Court should rule and then prepare their own summary with the reasons for their opinion. Use Think-Pair-Share (p. T22) to give students a chance to verbalize their thoughts before they write their summaries.

After students have completed their worksheets and shared their summaries with the class, tell them that in *T.L.O. v. New Jersey*, the Supreme Court ruled that the vice principal's decision to search the students' belongings was "reasonable." He did not need to show probable cause or get a warrant. Students' privacy and 4th Amendment rights must be weighed against the school's interest in preventing the use of illegal drugs. The Supreme Court stated that the New Jersey supreme court had been wrong to suppress the evidence found by the vice principal. Administrators and teachers have the authority, in order to maintain discipline and order, to take immediate action in certain situations.

L4 Differentiate Have students research two cases related to school drug-testing programs: *Vernonia School District v. Acton* and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*. After completing their research, have students give a short speech that:

- identifies the issues each case raises about students' 4th Amendment rights;
- compares and contrasts the facts and the rulings in the two cases;
- explains whether the student agrees or disagrees with the Supreme Court's decision in each case.

L2 Differentiate Have students conduct a citizens' rights poll. Questions may include: (1) What does the 4th Amendment guarantee? (2) May an officer arrest a suspect without a warrant? (3) May an officer search a driver and passenger if their vehicle is pulled over? Have students summarize the findings of the poll on a poster.

To meet that problem, the Supreme Court has adopted, and is still refining, the **exclusionary rule**. Essentially, the rule is this: Evidence gained as the result of an illegal act by police cannot be used at the trial of the person from whom it was seized.

The rule was first laid down in *Weeks v. United States*, 1914. In that narcotics case, the Court held that evidence obtained illegally by federal officers could not be used in the federal courts. For decades, however, the Court left questions of the use of such evidence in State courts for each State to decide for itself.



SUPREME COURT
at a glance

► **Case:** *Mapp v. Ohio*, 1961
► **Issue:** States' use of illegally obtained evidence
► **Decision:** After a warrantless search for a fugitive in Dolores Mapp's house, police officers instead turned up "lewd and lascivious material" and used it as evidence to convict Mapp. The Supreme Court struck down Mapp's conviction, holding that evidence seized illegally could not be used in either federal or State courts.

Mapp v. Ohio The exclusionary rule was finally extended to the States in *Mapp v. Ohio*, 1961. There, the Court held that the 14th Amendment forbids unreasonable searches and seizures by State and local officers just as the 4th Amendment bars such actions by federal officers. It also held that the fruits of an unlawful search or seizure cannot be used in the State courts, just as they cannot be used in the federal courts.

In *Mapp*, Cleveland police had gone to Dolores Mapp's home to search for a fugitive who was connected to a bombing. They entered her home forcibly, and without a warrant. Their very extensive search failed to turn up any evidence of the fugitive, but they did find some obscene books. Mapp was then convicted of possession of obscene materials and sentenced to jail. The Court overturned her conviction, holding that the evidence against her had been found and seized without a warrant.

Cases Narrowing the Rule The exclusionary rule has always been controversial. It was intended to put teeth into the 4th Amendment, and it has. It says to police: As you enforce the law, obey the law. The rule seeks to prevent, or at least deter, police misconduct.

Critics of the rule say that it means that some persons who are clearly guilty nonetheless go free. Why, they ask, should criminals be able to "beat the rap" on "a technicality"?

The Court has narrowed the scope of the rule most notably in the four cases in the feature on the next page.

Drug Testing Programs Federal drug-testing programs involve searches of persons, so are covered by the 4th Amendment. To date, however, the Court has held that those programs can be conducted without warrants or even any indication of drug use by those who must take the tests. It did so in two 1989 cases. One involved the mandatory testing of those drug enforcement officers of the U.S. Customs Service (now Immigration and Customs Enforcement) who carry firearms, *National Treasury Employees Union v. Von Raab*. The other had to do with the testing of railroad workers after a train accident, *Skinner v. Railway Labor Executives' Association*. In effect, the Court said in both cases that the violations of privacy involved were outweighed by a legitimate governmental interest—for example, in *Skinner*, discovering the cause of a train accident.

The Court has also upheld two local school districts' drug-testing programs, both covered by the 14th Amendment's Due Process Clause. It sustained an Oregon school district's program that requires all students who take part in school sports to agree to be tested for drug use, *Vernonia School District v. Acton*, 1995. That ruling was extended in a case from Oklahoma, *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 2002. There, the Court upheld the random testing of students who want to participate in *any* competitive extracurricular activity. In both of these cases, the Court said that "a warrant and finding of probable cause are unnecessary in the public school context because [they] would unduly interfere with . . . swift and informal disciplinary procedures."

The Patriot Act The USA Patriot Act, commonly called the Patriot Act, is officially the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. It was passed by Congress and signed by President George W. Bush just six weeks after the terrorist attacks of 9/11. That 342-page statute

Debate

Since *Pottawatomie*, drug testing of students participating in extracurricular activities has expanded, leading to court challenges. A Pennsylvania school tested Kimberly and Jennifer Theodore. School officials did not suspect the girls of drug use or have any evidence of use. The girls were student leaders, and the school tested them to set an example. Their parents felt the test was an invasion of privacy, and sued. In *Theodore v. Delaware Valley School District*, 2003, the Pennsylvania supreme court ruled for the parents. In the opinion, Justice Ronald D. Castille wrote: "The [school's] theory apparently is that, even in the absence of any suspicion of drug or alcohol abuse, it is appropriate to single these students out and say, in effect: 'Choose one: your Pennsylvania constitutional right to privacy or the chess club.'" To begin a class debate, ask: **Should schools be allowed to conduct "suspicionless" drug tests?**

Exceptions to the Exclusionary Rule

In recent decades, the Supreme Court has narrowed the scope of the exclusionary rule by allowing evidence to be admissible in situations that it previously had not. *What is the purpose of that rule?*



◀ Evidence bag

Inevitable Discovery

Tainted evidence can be used in court if it “inevitably would have been discovered by lawful means.” In *Nix v. Williams*, 1984, the defendant claimed the evidence against him had been found only after his confession was illegally obtained. **The Court ruled that the evidence ultimately would have been found without the defendant’s statement.**

Knock-and-Announce Violation

The centuries-old “knock-and-announce” rule requires that police announce their presence before serving a warrant. The rule is intended to give residents a chance to open the door, not hide evidence. **The Court found that the rule is meant to protect persons and property from violence when police arrive, *Hudson v. Michigan*, 2006.**

Good Faith

In *United States v. Leon*, 1984, agents thought they were using a proper warrant. Their warrant was later shown to be faulty, but the Court upheld their actions nonetheless: **“When an officer acting with objective good faith has obtained a search warrant . . . and acted within its scope . . . there is nothing to deter.”**

Honest Mistakes

The Court allowed the use of evidence seized in the mistaken search of an apartment, *Maryland v. Garrison*, 1987. Officers had a warrant to search for drugs in an apartment on the third floor of a building. Not realizing that there were two apartments, they entered and found drugs in the wrong apartment—the one for which they did not have a warrant.

Evidence is admissible

was renewed, after some contentious debate and with some modifications, in 2006.

The law provides for greatly increased governmental powers to combat domestic and international terrorist activities. Its major provisions focus on three broad areas: surveillance and investigation, immigration, and the financing of terrorist groups. Several provisions raise significant civil liberties issues that, over time, will be tested in the courts.

Of particular 4th Amendment concern are the act’s provisions that allow so-called “sneak-and-peek searches.” Under the statute, federal agents, acting with a warrant, may enter a person’s home or office when no one

is present and conduct a search—making notes, taking photos, and so on. The agents need not notify the person who is the subject of the search for weeks or even months—and so they are able to continue their investigation without that person’s knowledge.

Wiretapping Electronic eavesdropping, such as wiretapping, videotaping, and other more sophisticated means of “bugging,” is now quite widely used in the United States. These various techniques of discovery present difficult search and seizure questions that the authors of the 4th Amendment could not possibly have foreseen.

Tell students to go to the Audio Tour for a guided audio tour of several Supreme Court cases.

Assess and Remediate

L3 Tell students that a foreign exchange student needs to know her 4th Amendment rights against unreasonable searches and seizures. Have students develop a brochure or draw an illustrated guide showing law enforcement actions that are limited by the 4th Amendment and the exclusionary rule. Law enforcement actions that are upheld by Court rulings should also be included.

L3 Collect the Core Worksheets and assess student work using the Rubric for Assessing a Graph, Chart, or Table (Unit 5 All-in-One, p. 240).

L3 Assign the Section 2 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 146)

L2 Section Quiz B (Unit 5 All-in-One, p. 147)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

Background

4TH AMENDMENT PROTECTIONS The Court has decided only a handful of eavesdropping cases since *Katz*. In 1999 it held that “a reasonable expectation of privacy” had been violated when police officers invited reporters and photographers to go with them into a man’s home to witness their search and his arrest, *Wilson v. Layne*. And it has ruled that federal agents must secure a warrant before they can use heat-sensing devices to look inside a person’s home to find evidence of drug law violations, *Kyllo v. United States*, 2001.

Answers

Exceptions to the Exclusionary Rule The exclusionary rule was intended to make 4th Amendment protections meaningful by preventing the use of illegally obtained evidence in court.

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
13th Amendment protections (Question 2)	Have students make a timeline showing the changes in application of the 13th Amendment as discussed in this section.
2nd Amendment protections (Question 3)	Ask students to write two editorials on gun control, one from the point of view of gun-control advocates (such as the Fraternal Order of Police) and one from the point of view of gun-control opponents (such as the National Rifle Association).
4th Amendment protections (Questions 1, 4, 5, 6)	Have students draw a two-column chart. In the first column, they should list at least ten Court cases discussed in the text regarding the 4th Amendment. In the second column, next to each case, students should write the constitutional guarantees that resulted from or were narrowed by the case in column one.

Answers

Checkpoint In *Olmstead*, the Court ruled that wiretapping did not involve a search and, therefore, needed no warrant. *Katz* overruled *Olmstead*, stating that wiretapping a phone booth violated a person's 4th Amendment right to privacy.

Checkpoint
How did the Court's ruling in *Katz v. United States* differ from its ruling in *Olmstead v. United States*?

The 4th Amendment has always applied to "searches" that involve a physical intrusion—for example, a police officer entering a building or reaching inside a car. The amendment has also always applied to "seizures" that produce some tangible object—for example, a gun or a packet of methamphetamines found inside a car. Listening in on a conversation electronically, from afar, is a quite different matter.

In fact, in its first eavesdropping case, *Olmstead v. United States*, 1928, the Court held that the wiretapping there did not constitute a "search." The case arose when federal agents tapped a Seattle bootlegger's telephone calls. Their bugs produced evidence that led to *Olmstead*'s conviction under the National Prohibition Act. The Court upheld that conviction. It found that, although the agents had not secured a warrant, there had been no "actual physical invasion" of *Olmstead*'s home or office, and so no violation of the 4th Amendment because the phone lines had been tapped *outside* those places.

Olmstead stood for nearly forty years. It was finally overruled in what remains the leading case today, *Katz v. United States*, 1967. *Katz* had been convicted of transmitting gambling information across State lines. He had used a public phone booth in Los Angeles to call his contacts in Boston and Miami. Much of the evidence against him

had come from an electronic tap placed on the roof—outside—of the phone booth.

The Court ruled that the bugging evidence could not be used against *Katz*. Despite the fact that he was in a public, glass-enclosed phone booth, he was entitled to make a *private* call, from a place where he had "a reasonable expectation of privacy." Said the Court: The 4th Amendment protects "persons, not just places." It noted, however, that the requirements of the amendment can be satisfied in such situations if police obtain a proper warrant before they install a listening device.

Congress responded to the Court's decision in *Katz* in a provision in the Omnibus Crime Control and Safe Street Act of 1968. There, Congress prohibited any wiretapping for domestic purposes except that authorized by a warrant issued by a federal judge.

Soon after September 11, President George W. Bush directed the National Security Agency (NSA), acting in secret and without court-approved warrants, to monitor the international telephone calls and e-mails of Americans with suspected ties to terrorists. The public did not become aware of that monitoring program until late 2005, and its disclosure brought a storm of protest. Many insist that this NSA activity is illegal. However, the Bush administration defended it as an appropriate exercise of the President's power as commander in chief.

SECTION 2 ASSESSMENT

Essential Questions Journal

To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

- 1. Guiding Question** Use your completed graphic organizer to answer this question: How does the Constitution protect the freedom and security of the person?

Key Terms and Comprehension

2. (a) What does the 13th Amendment guarantee? **(b)** How did the *Civil Rights Cases*, 1883, undermine those guarantees?

3. (a) How does the 4th Amendment limit government? **(b)** When does the 4th Amendment come into play during an arrest?
- Critical Thinking**

4. Express Problems Clearly (a) What does the exclusionary rule exclude? **(b)** Does the exclusionary rule serve the interests of justice? Answer this question first as the defendant in a criminal trial, and then as an arresting police officer.

5. Identify Central Issues (a) Why did the Court overturn the conviction in *Katz v. United States*? **(b)** Do you agree with the Court's decision? Why or why not?

Quick Write

Research Essay: Organize Your Notes Research to find additional information on the case you selected in Section 1, taking notes as you read. Then organize your notes under main headings. Scan the material for subtopics. Subtopics may include *What is this case about?* *How did it change an existing law?* *Why is it important to individual rights today?* Under your subtopics, write related details.

Assessment Answers

- 1. through the 2nd, 3rd, 4th, 13th, and 14th amendments
- 2. **(a)** the end to slavery and involuntary servitude **(b)** by allowing racial discrimination against African Americans by private individuals
- 3. **(a)** by requiring officers to show probable cause to obtain a warrant to search for or seize evidence or a suspect **(b)** when an officer has in some way restrained the liberty of a citizen
- 4. **(a)** evidence gained as a result of an illegal act by police **(b)** Possible answers: Defendant's view: Yes. The rule protects the accused and

prevents police misconduct. Police view: No. The rule unreasonably restricts the ability of police officers to gather evidence to convict a guilty person.

5. (a) The police illegally tapped a phone booth in which *Katz* had a "reasonable expectation of privacy." **(b)** Possible answer: Yes. Tapping phones is an invasion of privacy that should be illegal unless supported by a warrant.

QUICK WRITE Students should organize ideas from their notes by the main headings and subtopics they identify.

ISSUES OF OUR TIME

Balancing Security and Liberty

▶ Track the Issue

As international relations expanded in the 20th century, so too did government surveillance.

1908

The Bureau of Investigation (BOI) is formed and becomes the Federal Bureau of Investigation (FBI) in 1935.

1947

The National Security Act establishes the Central Intelligence Agency (CIA) to coordinate intelligence affecting national security.

1978

The Foreign Intelligence Surveillance Act (FISA) is passed. The FISA Court must issue warrants to authorize secret surveillance of suspected terrorists in the U.S.

2001

The Patriot Act is passed. The National Security Agency (NSA) secretly monitors international calls and e-mails of Americans with suspected ties to terrorists without court-approved warrants.

2008

The Protect America Act revises FISA warrant requirements, granting immunity to telecommunications companies that eavesdropped on Americans without warrants.

Justice Sandra Day O'Connor ▶



▶ Perspectives

The 4th Amendment protection against unreasonable search and seizure without probable cause is always tested during times of war. The government contends that with new technologies, traditional methods of obtaining search warrants give terrorists an advantage. How far into the realm of individual liberties can or should the government go to protect national security?

"It is during our most challenging . . . moments that our Nation's commitment to due process is most severely tested . . . We have . . . made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens. Whatever power the . . . Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake. . . ."

—Justice Sandra Day O'Connor, 2004

"FISA requires the intelligence community to make a finding of probable cause. . . [which] was never intended to be expanded to protect the rights of foreign terrorists overseas. Showing probable cause often takes time, is sometimes impossible, and makes intelligence officers spend valuable time convincing lawyers that this standard is met, rather than doing their most important task—hunting down terrorists and other foreign threats."

—Dana Perino, Press Secretary, 2008

▶ Connect to Your World

- 1. Understand (a)** What rights does Justice O'Connor concede to the executive branch during wartime? **(b)** How does the executive branch justify surveillance without a warrant?
- 2. Draw Conclusions** Which argument do you find to be the most convincing? Why?



GOVERNMENT ONLINE In the News

To find out more about balancing security and liberty, visit PearsonSuccessNet.com

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LESSON GOAL

- Students will analyze points of view on the issue of protecting national security while guarding individual liberties.

Teach

STUDY THE TIMELINE

Draw a horizontal line on the board. As volunteers read aloud the entries under "Track the Issue," write the years and general events in the appropriate place on the timeline. Then, between the 1947 and 1978 entries, write "1967 The Supreme Court rules that bugging is illegal without a search warrant, *Katz v. United States*." Ask: **How does knowledge of this event affect your perception of the 2001 and 2008 events?**

ANALYZE HISTORICAL PERSPECTIVE

Write these quotes by James Madison on the board:

- It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger, real or pretended, from abroad.
- The means of defense against foreign danger historically have become the instruments of tyranny at home.

Discuss how Madison's statements support the comment by Justice O'Connor in the feature. Ask whether Madison's statements are applicable to today's war on terrorism. Why or why not?

L2 ELL Differentiate Define *universal* (commonly agreed upon), *provisions* (steps taken to meet a need), and *tyranny* (oppression).

Assess and Remediate

Refer students to the Document-Based Assessment at the end of this chapter. Discuss reasons why the Patriot Act is so controversial. Then have students draw a political cartoon reflecting their own opinions about the Patriot Act.

Answers

- (a) the right to have exchanges with other nations or with enemy organizations (b) Probable cause was never intended to protect the rights of foreign terrorists overseas; showing probable cause takes time, is sometimes impossible, and takes intelligence officers away from hunting down terrorists and other foreign threats.
- Students should support their responses.

Background

ATTACKING TERRORIST COMMUNICATIONS A fundamental goal of U.S. intelligence agencies is to infiltrate communications networks of terrorists. According to the *National Strategy for Combating Terrorism*: "The methods by which terrorists communicate are numerous and varied. Our enemies rely on couriers and face-to-face contacts with associates and tend to use what is accessible in their local areas as well as what they can afford. They also use today's technologies with increasing acumen and sophistication. This is especially true with the Internet, which they exploit to create and disseminate propaganda, recruit new members, raise funds and other material resources, provide instruction on weapons and tactics, and plan operations. Without a communications ability, terrorist groups cannot effectively organize operations, execute attacks, or spread their ideology."

GUIDING QUESTION

What protections does the Constitution set out for persons accused of crimes?

Rights of the Accused	
5th Amendment	6th Amendment
<ul style="list-style-type: none">• grand jury in federal criminal cases• no double jeopardy• no self-incrimination	<ul style="list-style-type: none">• speedy and public trial• impartial jury• adequate defense• informed of nature and cause of accusation• confront witnesses• subpoena favorable witnesses• assistance of counsel

Get Started

LESSON GOALS

Students will . . .

- identify the rights of people accused of crimes by note-taking, completing a tree diagram, and discussing a case related to habeas corpus.
- evaluate the guarantee against self-incrimination by participating in simulations and analyzing a case related to the Miranda rule.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 148) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 149)

SKILLS DEVELOPMENT

GIVE A MULTIMEDIA PRESENTATION

Before the debate in this lesson, you may want to review tips on giving a multimedia presentation in the Skills Handbook, p. S21.

SECTION 3

Rights of the Accused

Guiding Question

What protections does the Constitution set out for persons accused of crimes? Use a table to take notes on the section.

Rights of the Accused	
5th Amendment	6th Amendment
<ul style="list-style-type: none">•••	<ul style="list-style-type: none">•••

Political Dictionary

- writ of habeas corpus
- bill of attainder
- ex post facto law
- grand jury
- indictment
- presentment
- information
- double jeopardy
- bench trial
- Miranda rule

Objectives

1. Define writ of habeas corpus, bills of attainder, and ex post facto laws.
2. Outline how the right to a grand jury and the guarantee against double jeopardy help safeguard the rights of the accused.
3. Describe issues that arise from guarantees of speedy and public trials.
4. Determine what constitutes a fair trial by jury.
5. Examine the right to an adequate defense and the guarantee against self-incrimination.

Image Above: A suspect must be brought before the court and informed of the charges against him.

Think about this statement: “It is better that ten guilty persons go free than that one innocent person be punished.” That maxim expresses one of the bedrock principles of the American legal system.

Of course, society must punish criminals in order to preserve itself. However, the law intends that any person who is suspected or accused of a crime must be presumed innocent until proven guilty by fair and lawful means.

Habeas Corpus

The writ of habeas corpus, sometimes called the writ of liberty, is intended to prevent unjust arrests and imprisonments.⁷ It is a court order directed to an officer holding a prisoner. It commands that the prisoner be brought before the court and that the officer show cause—explain, with good reason—why the prisoner should not be released.

The right to seek a writ of habeas corpus is protected against the National Government in Article I, Section 9 of the Constitution. That right is guaranteed against the States in each of their own constitutions.

The Constitution says that the right to the writ cannot be suspended, “unless when in Cases of Rebellion or Invasion the public Safety may require it.” President Abraham Lincoln suspended the writ in 1861 during the Civil War. His order covered various parts of the country, including several areas in which war was not then being waged. Chief Justice Roger B. Taney, sitting as a circuit judge, held Lincoln’s action unconstitutional, *Ex parte Merryman*, 1861.

Taney ruled that the Constitution gives the power to suspend the writ to Congress alone. Congress then passed the Habeas Corpus Act of 1863. It gave the President the power to suspend the writ when and where, in his judgment, that action was necessary. In *Ex parte Milligan*, 1866, the Supreme Court ruled that neither Congress nor the President can suspend the writ in those locales where there is no actual fighting nor the likelihood of combat.

The right to the writ has been suspended only once since the Civil War and the Reconstruction Period that followed it. The territorial governor of Hawaii

⁷ The phrase *habeas corpus* comes from the Latin, meaning “you should have the body,” and those are the opening words of the writ.

Focus on the Basics

FACTS: • Rights of the accused include the writ of habeas corpus and a constitutional ban on bills of attainder and ex post facto laws. • Persons accused of serious federal crimes have the right to a grand jury proceeding. • Accused persons are guaranteed a speedy and public trial by jury, the right to an adequate defense, and a guarantee against self-incrimination and double jeopardy. • Suspects must be told of their constitutional rights before police questioning.

CONCEPTS: individual rights and responsibilities, due process of law, limited government

ENDURING UNDERSTANDINGS: • In the American judicial system, any person accused of a crime is presumed innocent until proven guilty. • The 5th and 6th amendments contain provisions guaranteeing rights to people accused of crimes.

did so following the Japanese attack on Pearl Harbor in December 1941. The Supreme Court later ruled that the governor did not have the power to take that action, *Duncan v. Kahanamoku*, 1946.

In 2008, the Supreme Court held, for the first time, that foreign prisoners being held as enemy combatants at the U.S. naval base at Guantanamo Bay, Cuba, have a constitutional right to challenge their detention—that is, a right to seek writs of habeas corpus—in the federal courts, *Boumediene v. Bush* and *Al Odah v. United States*. The Bush administration had vigorously opposed that 5–4 ruling.

Bills of Attainder

A **bill of attainder** is a legislative act that provides for the punishment of a person without a court trial. The Constitution prohibits Congress from passing any such measure in Article I, Section 9, and it places the same prohibition on the States in Section 10.

The Framers wrote the ban on bills of attainder into the Constitution because Parliament and several of the colonial legislatures had passed many such bills. They have been quite rare in our national history, however.

The denial of the power to pass bills of attainder is both a protection of individual freedom and one of the Constitution's several provisions for separation of powers. In effect, the ban says to members of Congress and to the States' lawmakers: Be legislators, not judges. A legislative body can pass laws that define crime and set the penalties for violations of them. But it cannot pass a law that declares a person or identifiable group of persons guilty of a crime and provides for his or her punishment.

The Supreme Court has heard a handful of attainder cases in the last 140 years. One was decided in the early stages of the Cold War. It involved a provision in the law appropriating funds for the army that declared that none of the monies provided could be used to pay the salaries of three named persons. Several members of the House thought that those three were “subversive,” and they had urged the President to fire them. The Court found that provision to be a bill of attainder, *United States v. Lovett*, 1946.

In another similar case, *United States v. Brown*, 1965, the Court overturned a provision in the Landrum-Griffin Act of 1959. That provision made it a federal crime for a member of the Communist Party to serve as an officer of a labor union.

Ex Post Facto Laws

The Constitution, in Article I, Sections 9 and 10, prohibits Congress and the State legislatures from enacting ex post facto laws. An **ex post facto law** is a law applied to an act committed before its passage. The phrase *ex post facto* is from the Latin, meaning “after the fact.” An ex post facto law (1) is a criminal law—one defining a crime and/or providing for its punishment; (2) applies to an act committed before its passage; and (3) works to the disadvantage of the accused.

For example, a law making it a crime to sell marijuana cannot be applied to a sale that occurred before that law was passed. Or, a law that changes the penalty for murder from life in prison to death cannot be used to sentence a person who committed a murder before the punishment was made more severe.

Retroactive civil laws are *not* forbidden. Thus, a law raising income tax rates could be passed in November and applied to income earned through the whole year.

After the Japanese bombed Pearl Harbor, the governor of Hawaii suspended the writ of habeas corpus. **Who has the power to suspend the writ?**

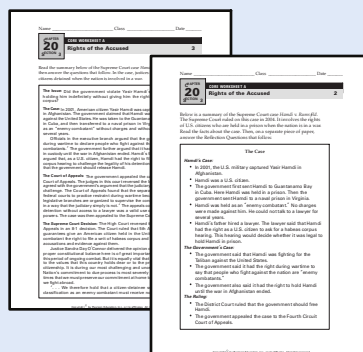


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Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 20, Section 3:

- L3** Reading Comprehension Worksheet (p. 148)
- L2** Reading Comprehension Worksheet (p. 149)
- L3 L2** Core Worksheet A (pp. 151, 155)
- L3 L2** Core Worksheet B (pp. 153, 158)
- L3** Quiz A (p. 161)
- L2** Quiz B (p. 162)



BELLRINGER

Display Transparency 20E, 5th Amendment Rights, which tests students' prior knowledge about the Miranda rights and “taking the Fifth.” Have students answer the questions in their notebooks.

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

REVIEW BELLRINGER ANSWERS

Discuss the Bellringer questions. (1) What “rights” is the man in Cartoon A requesting? (*From movies and television, students may know the Miranda rights: right to remain silent; anything you say can and will be used against you in a court of law; right to an attorney; if you cannot afford one, an attorney will be appointed for you.*) (2) In Cartoon B, what does “take the Fifth” mean? (*Students may know that “taking the Fifth” means remaining silent or not answering any questions that may lead to self-incrimination.*) (3) How are these cartoons related? (*Both deal with rights of the accused.*) Ask: **When are the Miranda rights usually read to someone?** (*Students should infer from the cartoon that the rights are read to someone who has “done something wrong”; legally, after arrest and before interrogation.*)

CLARIFY RIGHTS OF THE ACCUSED

Introduce this activity by asking students: **What is the underlying principle toward the accused in the U.S. justice system?** (*that people are innocent until proven guilty*) **Who has the burden of proving guilt?** (*the prosecution or government*) Then organize students into seven groups. Assign each group one of these topics: (a) habeas corpus; (b) grand jury; (c) double jeopardy; (d) speedy and public trial; (e) trial by jury; (f) right to an adequate defense; (g) guarantee against self-incrimination.

Each group should use the text to record the following: (1) the exact wording of the amendment or part of the Constitution where this right is found; (2) definition of the right in their own words; (3) how this right protects a person accused of a crime; (4) what responsibilities this right puts on the judicial system; (5) Supreme Court precedents related to this right and how the decision in each case limited or expanded this guarantee; and (6) how the criminal justice system would be different if people accused of crimes did not have this right.

L2 ELL Differentiate Before beginning the group work, have volunteers find and read the definitions of these words in the dictionary: *habeas corpus*, *jeopardy*, *self-incrimination*.

Answers

Caption Congress

Rights of the Accused

Steps of Justice

Any person accused of a crime is presumed to be innocent until proven guilty. *What protections does the Constitution extend to those accused of a crime?*

Arrest

- Officers must have a warrant or act on probable cause.
- No unreasonable search or seizure.
- Accused may request writ of habeas corpus to challenge detention.

Interrogation

- Accused must be informed of rights to counsel and to remain silent.
- No third degree methods or coerced confession.

Grand Jury Proceeding

- Grand jury weighs evidence provided by prosecutor.
- Accused may be charged by indictment or presentation.
- Bail, if required, cannot be excessive.



Grand Jury

The 5th Amendment to the Constitution states that:

FROM THE CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . .

The **grand jury** is the formal device by which a person can be accused of a serious crime—that is, any offense for which the punishment is death or imprisonment.⁸ In federal cases, it is a body of from 16 to 23 persons drawn from the area of the district

court that it serves. The votes of at least 12 of the grand jurors are needed to return an indictment or to make a presentment.

An **indictment** is a formal complaint that the prosecutor lays before a grand jury. It charges the accused with one or more crimes. If the grand jury finds that there is enough evidence for a trial, it returns a “true bill of indictment.” The accused person is then held for prosecution. If the grand jury does not make such a finding, the charge is dropped and the accused is set free.

A **presentment** is a formal accusation brought by the grand jury on its own motion, rather than that of the prosecutor. It is rarely used in federal courts.

A grand jury’s proceedings are not a trial. Since unfair harm could come if they were public, its sessions are secret. They are also on one side only—known as an *ex parte* judicial proceeding. That is, only the prosecution, not the defense, is present.

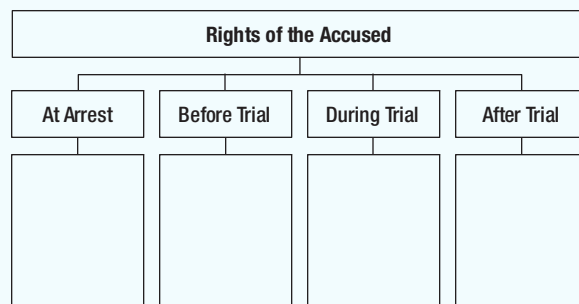
⁸ The 5th Amendment declares that the guarantee of grand jury does not extend to “cases arising in the land or naval forces.” The conduct of members of the armed forces is regulated under a code of military law enacted by Congress, now the Uniform Code of Military Justice.

SHARE NOTES USING JIGSAW STRATEGY

After groups have completed the discussion and notes of their assigned topic (see Clarify Rights of the Accused on the previous page), use the Jigsaw strategy (p. T27), which allows students to teach the other groups what they have learned. Conclude by asking students in their second groups to pick the three rights of the accused they think are most important. Ask each group to share its choices and reasons with the class.

DIAGRAM RIGHTS OF THE ACCUSED

Display Transparency 20F, Rights of the Accused, which shows the How Government Works diagram “Steps of Justice.” Then draw a tree diagram on the board to help students categorize and review the rights of the accused. Label the four squares “At Arrest,” “Before Trial,” “During Trial,” and “After Trial.” Students should put each of the rights listed on the transparency into the appropriate part of the diagram. Explain that “After Trial” rights will be discussed in Section 4. “No excessive fines or cruel and unusual punishment” and “right to appeal” should be written in that part of the diagram.



Answers

Steps of Justice officers must have warrant or act on probable cause; no unreasonable search or seizure; accused may request writ of habeas corpus; accused must be informed of right to counsel and to remain silent; no third degree methods or coerced confession; accused may be charged by indictment or presentation; no excessive bail; public trial by impartial jury; accused may request change of venue; assistance of counsel guaranteed; no self-incrimination; favorable witnesses may be subpoenaed, opposing witnesses confronted; jury verdict to convict must be unanimous; no double jeopardy

Background

EX POST FACTO LAWS Ex post facto cases do not come along very often. The Court decided its most recent one, *Carmell v. Texas*, in 2000. There, the Court overturned a man’s sexual abuse conviction because of a change in State law. That change had made it easier for the prosecution to prove its charge than was the case when the abuse was committed.

Trial

- Public trial by an impartial jury within 100 days of arrest.
- Accused may request a change of venue.
- Assistance of counsel guaranteed.
- No self-incrimination.
- Favorable witnesses may be subpoenaed, opposing witnesses confronted.
- Jury's verdict to convict must be unanimous.
- No double jeopardy.

Punishment (if found guilty)

- No excessive fine.
- No cruel and unusual punishment.

Appeals

- Either side may appeal a verdict against it.



The right to grand jury is intended as a protection against overzealous prosecutors. Critics say that it is too time-consuming, too expensive, and too likely to follow the dictates of the prosecutor.

The 5th Amendment's grand jury provision is the only part of the Bill of Rights relating to criminal prosecution that the Supreme Court has not brought within the coverage of the 14th Amendment's Due Process Clause. In the majority of States today, most criminal charges are not brought by grand jury indictment. They are brought, instead, by an **information**, an affidavit in which the prosecutor swears that there is enough evidence to justify a trial. (For more information, see Chapter 24.)

Double Jeopardy

The 5th Amendment's guarantee against double jeopardy is the first of several protections in the Bill of Rights especially intended to

ensure fair trials in the federal courts.⁹ Fair trials are guaranteed in State courts by the provisions in each State's constitution and also, recall, by the 14th Amendment's Due Process Clause, *Benton v. Maryland*, 1969.

The 5th Amendment says in part that no person can be "twice put in jeopardy of life or limb." Today, this prohibition against **double jeopardy** means that once a person has been tried for a crime, he or she cannot be tried again for that same crime.

A person can violate both a federal *and* a State law in a single act, however—for example, by selling narcotics. That person can then be tried for the federal crime in a federal court and for the State crime in a State court. A single act can also result in several criminal charges. A person who breaks into a

⁹ See the 5th, 6th, 7th, and 8th amendments and Article III, Section 2, Clause 3. The exclusionary rule (practice of excluding evidence obtained in violation of the 4th Amendment) is also intended to guarantee a fair trial.

Teacher-to-Teacher Network

ALTERNATE LESSON PLAN "If you haven't done anything wrong, why not answer the police officer's questions?" To help students answer this question, provide them with a brief historical overview of the 5th Amendment. Then discuss the importance of the 5th Amendment protection against self-incrimination. Have students write an essay or give an oral presentation about the trade-off between the need for law enforcement and protection of individual rights, such as the right to privacy.

To see this lesson plan, go to



Tell students to go to the Audio Tour to learn more about the rights of the accused.

ANALYZE HABEAS CORPUS ISSUES

Distribute the Chapter 20 Section 3 Core Worksheet A (Unit 5 All-in-One, p. 151). Explain that students will look at the challenges the courts face in balancing due process rights of the accused with national security during wartime. They will analyze the Supreme Court case *Hamdi v. Rumsfeld*, 2004. Before students begin the worksheet, review the definition of *habeas corpus* in Article 1 of the Constitution. Remind students that the right to a writ of habeas corpus can be suspended "when in Cases of Rebellion or Invasion the public Safety may require it."

Name _____ Class _____ Date _____

CHAPTER 20 SECTION 3	CORE WORKSHEET A Rights of the Accused	3
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Read the summary below of the Supreme Court case *Hamdi v. Rumsfeld*, 2004, and then answer the questions that follow. In the case, justices consider the rights of U.S. citizens detained when the nation is involved in a war.

The Issue: Did the government violate Yasir Hamdi's due process rights by holding him indefinitely without giving him the right to file a writ of habeas corpus?

The Case: In 2001, American citizen Yasir Hamdi was captured by the U.S. military in Afghanistan. The government claimed that Hamdi was fighting for the Taliban against the United States. He was taken to the Guantanamo Bay detention center in Cuba, and then transferred to a naval prison in Virginia. There he was held as an "enemy combatant" without charges and without access to a lawyer for several years.

Officials in the executive branch argued that the government has the right during wartime to declare people who fight against the United States "enemy combatants." The government further argued that it had the right to hold Hamdi in custody until the war in Afghanistan ended. Hamdi's father hired a lawyer who argued that, as a U.S. citizen, Hamdi had the right to file a request for a habeas corpus hearing to challenge the legality of his detention. The District Court ruled that the government should release Hamdi.

The Court of Appeals: The government appealed the case to the Fourth Circuit Court of Appeals. The judges in this court reversed the lower court's ruling. They agreed with the government's argument that the judiciary should not hear Hamdi's challenge. The Court of Appeals found that the separation of powers required federal courts to practice restraint during wartime because the "executive and legislative branches are organized to supervise the conduct of overseas conflict in a way that the judiciary simply is not." The appeals court decided that Hamdi's detention without access to a lawyer was a valid use of the government's war powers. The case was then appealed to the Supreme Court.

The Supreme Court Decision: The High Court reversed the ruling of the Court of Appeals in an 8-1 decision. The Court ruled that 5th Amendment due process guarantees give an American citizen held in the United States as an enemy combatant the right to file a writ of habeas corpus and receive a hearing on the accusations and evidence against them.

Justice Sandra Day O'Connor delivered the opinion of the Court: "Striking the proper constitutional balance here is of great importance to the Nation during this period of ongoing combat. But it is equally vital that [we] not give short shrift to the values that this country holds dear or to the privilege that is American citizenship. It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad.

... We therefore hold that a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis

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L2 Differentiate Distribute the adapted Chapter 20 Section 3 Core Worksheet A (Unit 5 All-in-One, p. 155).

L4 Differentiate Have students write an essay based on this quote from the Roman statesman and philosopher Cicero: "In time of war, the laws are silent." Students should explain what they think Cicero means and how it relates to the habeas corpus cases discussed in the text and on Core Worksheet A.

SIMULATE SUPREME COURT CASES

Ask students to define *self-incrimination* (acting as a witness against oneself in a criminal case). Then organize students into three groups. Have each group research and simulate one of the cases below, showing how it has affected the guarantee against self-incrimination. Simulations may take the form of a police drama, a documentary, or a radio or TV broadcast about the case.

- *Escobedo v. Illinois*, 1964: A confession cannot be used against a defendant if the confession was obtained by police who refused to allow the defendant to see an attorney or if the accused was not told that he or she had a right to refuse to answer questions. The Court's ruling extended the exclusionary rule to confessions obtained by unconstitutional means.
- *Miranda v. Arizona*, 1966: Because the police did not tell Miranda that he had a constitutional right to remain silent and to have an attorney present during interrogation, his rights were violated and his conviction overturned. Convictions will not be upheld in cases in which suspects have not been told of their constitutional rights before questioning.
- *Missouri v. Seibert*, 2006: The case outlawed two-step interrogations or "rehearsed confessions" if the accused was intentionally not given Miranda warnings until after the police had questioned the accused for the first time.

ASSESSMENT RUBRIC Explain to students that an excellent simulation will meet these standards:

1. *Research*: All members of the group conducted thorough research. Research was detailed and showed a deep understanding of the guarantee against self-incrimination.
2. *Planning*: The group made excellent use of planning time, sharing the writing and incorporating peer feedback. The selection of information used was well thought out and insightful.
3. *Presentation*: The simulation was creative, interesting, organized, focused on topic, and an appropriate length. Group members worked together harmoniously and dynamically. Actors were well rehearsed. The dialog was presented clearly and flowed logically.

Answers

Checkpoint Excessive media coverage can jeopardize the right to a fair trial.

store, steals liquor, and sells it can be tried for illegal entry, theft, and selling liquor without a license.

In a trial in which a jury cannot agree on a verdict (a hung jury), there is no jeopardy. It is as though no trial had been held. Nor is double jeopardy involved when a case is appealed to a higher court.¹⁰

Several States allow the continued confinement of violent sex predators after they have completed a prison term. The Court has twice held that that confinement is not punishment—and so does not involve double jeopardy. Rather, the practice is intended to protect the public from harm, *Kansas v. Hendrick*, 1987, and *Seling v. Young*, 2001.

Speedy and Public Trial

The 6th Amendment commands that:

FROM THE CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . .

Speedy Trial The guarantee of a speedy trial is meant to ensure that the government will try a person accused of crime within a reasonable time and without undue delay. But how long a delay is too long? The Supreme Court has recognized that each case must be judged on its own merits.

In a leading case, *Barker v. Wingo*, 1972, the Court listed four criteria for determining if a delay has violated the constitutional protection. They are (1) the length of the delay, (2) the reasons for it, (3) whether the delay has in fact harmed the defendant, and (4) whether the defendant had asked for a prompt trial.

The Speedy Trial Act of 1974 says that the time between a person's arrest and the beginning of his or her federal criminal trial cannot be more than 100 days. The law does allow for some exceptions, however—for

example, when the defendant must undergo extensive mental tests, or when the defendant or a key witness is ill.

The 6th Amendment guarantees a prompt trial in federal cases. The Supreme Court first applied this right against the States as part of the 14th Amendment's Due Process Clause in *Klopfer v. North Carolina*, 1967.

Public Trial The 6th Amendment says that a trial must also be public. The right to be tried in public is also part of the 14th Amendment's guarantee of procedural due process, *In re Oliver*, 1948.

A trial must not be too speedy or too public, however. The Supreme Court threw out an Arkansas murder conviction in 1923 on just those grounds. The trial had taken only 45 minutes, and it had been held in a courtroom packed by a threatening mob.

Within reason, a judge can limit both the number and the kinds of spectators who may be present at a trial. Those who seek to disrupt a courtroom can be barred from it. A judge can order a courtroom cleared when the expected testimony may be embarrassing to a witness or to someone else who is not a party to the case.

Many questions about how public a trial should be involve the media—especially newspapers and television. The guarantees of fair trial and free press often collide in the courts. On the one hand, a courtroom is a public place where the media have a right to be present. On the other hand, media coverage can jeopardize a defendant's right to a fair trial. The Supreme Court has often held that the right to a public trial belongs to the defendant, not to the media.

What about televised trials? Television cameras are barred from all federal courtrooms. Yet most States do allow some form of in-court television reporting. Can televising a criminal trial violate a defendant's rights?

In an early major case, *Estes v. Texas*, 1965, the Supreme Court reversed the conviction of an oil man charged with swindling investors and others out of millions of dollars. The Court found that the media coverage of his trial had been so "circus-like" and disruptive that Estes had been denied his right to a fair trial.

¹⁰ The Organized Crime Control Act of 1970 allows federal prosecutors to appeal sentences they believe to be too lenient. The Supreme Court has held that such appeals do not violate the double jeopardy guarantee, *United States v. Di Francesco*, 1980.

Debate

Organize students into two groups to debate this topic: **The Court has gone too far in expanding the rights of the accused.** Both sides should research the following points to prepare arguments for and against the topic:

- Explain the effects criminal acts have on their intended victims.
- Explain the different types of defenses used by perpetrators of crime.
- Cite the number of people wrongfully accused and incarcerated.

Sixteen years later, the Court held in *Chandler v. Florida*, 1981, that nothing in the Constitution prevents a State from allowing the televising of a criminal trial. At least, televising is not prohibited as long as steps are taken to avoid too much publicity and to protect the defendant's rights.

Trial by Jury

The 6th Amendment also says that a person accused of a federal crime must be tried "by an impartial jury." This guarantee reinforces an earlier one set out in the Constitution, Article III, Section 2. The right to trial by jury is also binding on the States, but only in cases involving "serious" crimes, *Duncan v. Louisiana* (1968).¹¹ The trial jury is often called the petit jury. *Petit* is the French word for "small."

The 6th Amendment adds that the members of a federal court jury must be drawn from "the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." This stipulation gives the defendant any benefit there might be in having a jury familiar with the people and problems of the area.

A defendant may ask to be tried in another place—seek a "change of venue"—on grounds that the people of the locality are so prejudiced in the case that an impartial jury cannot be drawn. The judge must decide whether a change of venue is justified.

A defendant may also **waive** the right to a jury trial. However, he or she can do so only if the judge is satisfied that the defendant fully understands what that action means. In fact, a judge can order a jury trial even when a defendant does not want one. If a defendant waives the right, a **bench trial** is held, which means that a judge alone hears the case. (Of course, a defendant can plead guilty and so avoid any trial.)

¹¹ In *Baldwin v. New York*, 1970, the Court defined serious crimes as those for which imprisonment for more than six months is possible.

¹² The 14th Amendment does not say that there cannot be juries of fewer than 12 persons, *Williams v. Florida*, 1970, but it does not allow juries of fewer than six members, *Ballaw v. Georgia*, 1978. Nor does it prevent a State from providing for a conviction on a less than unanimous jury vote, *Apodaca v. Oregon*, 1972. But if a jury has only six members, it may convict only by a unanimous vote, *Burch v. Louisiana*, 1979.

In federal practice, the jury that hears a criminal case must have 12 members. However, some federal civil cases are tried before juries of as few as six members. Several States now provide for smaller juries, often of six members, in both criminal and civil cases.

In the federal courts, the jury that hears a criminal case can convict the accused only by a unanimous vote. Most States follow the same rule.¹²

In a long series of cases, dating from *Strauder v. West Virginia*, 1880, the Supreme Court has held that a jury must be "drawn from a fair cross section of the community." A person is denied the right to an impartial jury if he or she is tried by a jury from which members of any groups "playing major roles in the community" have been excluded, *Taylor v. Louisiana*, 1975. In short, no person can be kept off a jury on such grounds as race, color, religion, national origin, or gender.

Adequate Defense

Every person accused of a crime has the right to the best possible defense that circumstances will allow. In *Gideon v. Wainwright*, 1963, the Court held that an attorney must be furnished to a defendant who cannot afford one. In many places, a judge assigns a lawyer from the local community,

Checkpoint
What are the advantages of having a local jury? Of having a change in venue?

waive
v. to give up or forgo

SUPREME COURT at a glance

- ▶ **Case:** *Gideon v. Wainwright*, 1963
- ▶ **Issue:** 6th Amendment right to counsel
- ▶ **Decision:** Clarence Earl Gideon (below) defended himself at his trial and was found guilty. He wrote to the Supreme Court, saying that he had been unconstitutionally denied counsel. The Court agreed and ordered a new trial, holding that an attorney must be provided to those who cannot afford one.



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EVALUATE THE MIRANDA RULE

Distribute the Chapter 20 Section 3 Core Worksheet B (Unit 5 All-in-One, p. 153), which examines the case of *Dickerson v. United States*, 2000. The case focuses on police use of Miranda warnings, as well as the separation of power between the legislative and judicial branches. After students complete their analysis of the case, discuss the Reflection Questions as a class.

Name _____ Class _____ Date _____

CHAPTER
20
SECTION 3

CORE WORKSHEET B
Rights of the Accused

3

Before questioning a suspect, police are required to read the Miranda rights to the accused. These rights are:

- You have the right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have the right to speak to an attorney, and to have an attorney present during any questioning.
- If you cannot afford a lawyer, one will be provided for you at government expense.

What if a police officer forgets or fails to recite the Miranda warnings, however, or a suspect talks to the police voluntarily before being advised of his or her rights? Can the confession still be used in court?

Read the details below of the case *Dickerson v. United States*, 2000. Then answer the questions that follow.

The Case: A car owned by Charles Dickerson was seen by eyewitnesses at the scene of a bank robbery. FBI agents and local detectives questioned Dickerson. At first, Dickerson admitted he had been in the area near the bank when the robbery took place, but that he had no connection with the robbery. Later he made a second statement, admitting that a relative of his robbed the bank while Dickerson drove the getaway car. Dickerson was arrested and charged with bank robbery.

When the case came to trial, Dickerson's lawyer filed a motion to suppress Dickerson's admission of driving the getaway car on the grounds that Dickerson had not received his Miranda rights until after he made his second statement. The prosecution, however, argued that a federal law passed by Congress in 1968 stated that a "confession shall be admissible in evidence if it is voluntarily given," even if defendants had not been read their Miranda rights. The prosecution held that Dickerson's statement was voluntary and therefore admissible in court because it fell under the 1968 law.

The District Court ruled in Dickerson's favor, allowing his confession to be suppressed because he had not been read his Miranda rights before he spoke with law enforcement officials.

The Court of Appeals: The Court of Appeals disagreed with the lower court's decision. The Court of Appeals ruled that although Dickerson had not received his Miranda warnings, the 1968 federal law passed by Congress allowed voluntary confessions to be admitted in court without these warnings. The Court of Appeals reversed the district court's order to suppress Dickerson's statement confessing his part in the robbery.

The Supreme Court Decision: The High Court reversed the ruling of the Court of Appeals in a 7-2 decision. The majority opinion made it clear that the justices

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L2 Differentiate Distribute the adapted Chapter 20 Section 3 Core Worksheet B (Unit 5 All-in-One, p. 158).

Supreme Court Notes

IMPARTIAL JURY As the Court has put it in several recent decisions on jury selection: Both the 5th and the 14th amendments mean that jury service cannot be determined by "the pigmentation of skin, the accident of birth, or the choice of religion." In *Miller-El v. Dretke*, 2005, Miller-El claimed that the prosecution purposefully excluded blacks from the jury in his capital murder trial. The Court held that Miller-El deserved to win his appeal because the jury selection was discriminatory. The Court noted that prosecutors excluded 91 percent of the eligible black prospective jurors, "a disparity unlikely to have been produced by happenstance." Two eliminated black prospective jurors were compared to similar white jurors who were not eliminated, and the Court concluded that the "selection process was replete with evidence that prosecutors were selecting and rejecting potential jurors because of race."

Answers

Checkpoint A local jury may be advantageous because the jurors are familiar with the people and problems of the area. A change of venue may be advantageous when the local people are so prejudiced that an impartial jury cannot be drawn.

EXTEND THE LESSON

L3 Differentiate The 6th Amendment commands that the accused shall have the right to a public trial. Have students hold a debate on this question: **Should television cameras be allowed in courtrooms holding criminal trials?** Although more than 35 States allow State criminal trials to be televised, the broadcasting of federal criminal trials has been prohibited since 1946. To prepare for the debate, have students answer the following questions: (1) Does the televising of a trial harm the defendant? (2) What effect might the televising of a trial have on the jury? On judges and witnesses? (3) Does televising a trial in any way help the public? (4) How might televising a trial affect the outcome?

L3 Differentiate Have students research a 20th-century trial, such as the Scopes trial, the Lindbergh kidnapping trial, the Scottsboro trials, the Sacco and Vanzetti trial, or the O.J. Simpson trial. Have them explain whether the 6th Amendment right to a public trial helped or harmed the defendants or proceedings.

L2 Differentiate Have students use a Venn diagram to compare petit jury trials with grand jury proceedings.

L4 Differentiate Ask students to create a political cartoon that addresses this topic: The Court has gone too far/not far enough in protecting the accused.

L3 Differentiate Ask students with artistic skills to draw a graphic novel depicting the major events in the case *Gideon v. Wainwright*.

Assess and Remediate

L3 Have students suppose that a friend has just been arrested. Ask them to diagram in a flowchart the due process rights the accused is entitled to at arrest, before trial, and during the trial. Encourage students to provide a step-by-step analysis of legal proceedings and the accused friend's rights that are associated with each step.

L3 Collect the Core Worksheets and assess students' participation using the Rubric for Assessing a Writing Assignment (Unit 5 All-in-One, p. 242).

L3 Assign the Section 3 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 161)

L2 Section Quiz B (Unit 5 All-in-One, p. 162)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

Answers

Caption refusing to speak or incriminate oneself



▲ The guarantee against self-incrimination does not prevent the fingerprinting of a suspect. **What does “taking the Fifth” mean?**

subpoena
v. to legally summon,
order to appear

or a private legal aid association provides counsel.

The 6th Amendment says that a defendant has the right (1) “to be informed of the nature and cause of the accusation,” (2) “to be confronted with the witnesses against him” and question them in open court, (3) “to have compulsory process for obtaining witnesses in his favor” (that is, favorable witnesses can be subpoenaed, and (4) “to have the Assistance of Counsel for his defense.”

These key safeguards apply in the federal courts. Still, if a State fails to honor any of them, the accused can appeal a conviction arguing that the 14th Amendment's Due Process Clause has been violated. The Supreme Court protected the right to counsel in *Gideon v. Wainwright*, 1963; the right of confrontation in *Pointer v. Texas*, 1965; and the right to call witnesses in *Washington v. Texas*, 1967.

These guarantees are intended to prevent the cards from being stacked in favor of the prosecution. One of the leading right-to-counsel cases, *Escobedo v. Illinois*, 1964, illustrates this point.

Chicago police picked up Danny Escobedo for questioning in the death of his brother-in-law. On the way to the police station, and then while he was being questioned there, he asked several times to see his lawyer. The police denied those requests.

They did so even though his lawyer was in the police station and was trying to see him, and the police knew the lawyer was there. Through a long night of questioning, Escobedo made several damaging statements. Prosecutors later used those statements in court as a major part of the evidence that led to his murder conviction.

The Supreme Court ordered Escobedo freed from prison four years later. It held that he had been improperly denied his 14th Amendment right to counsel.

Self-Incrimination

The guarantee against self-incrimination is among the several protections set out in the 5th Amendment. That provision declares that no person can be “compelled in any criminal case to be a witness against himself.” This protection must be honored in both the federal and State courts, *Malloy v. Hogan*, 1964.

In a criminal case, the burden of proof is always on the prosecution. The defendant does not have to prove his or her innocence. The ban on self-incrimination prevents the prosecution from shifting the burden of proof to the defendant.

Applying the Guarantee The language of the 5th Amendment suggests that the guarantee against self-incrimination applies only to criminal cases. In fact, it covers any governmental proceeding in which a person is legally compelled to answer any question that could lead to a criminal charge. Thus, a person may claim the right (“take the Fifth”) in a variety of situations: in a divorce proceeding (which is a civil matter), before a legislative committee, at a school board's disciplinary hearing, and so on.

The courts, not the individuals who claim it, decide when the right can be properly invoked. If the plea of self-incrimination is pushed too far, a person can be held in contempt of court.

The guarantee against self-incrimination is a personal right.¹³ One can claim it only

¹³ With this major exception: A husband cannot be forced to testify against his wife, or a wife against her husband, *Trammel v. United States*, 1980. One can testify against the other voluntarily, however.

Supreme Court Notes

MIRANDA V. ARIZONA Chief Justice Earl Warren provided historical context in his opinion: “From extensive factual studies undertaken in the early 1930's . . . it is clear that police violence and the ‘third degree’ flourished at that time. In a series of cases decided by this Court long after these studies, the police resorted to physical brutality—beating, hanging, whipping—and to sustained and protracted questioning incommunicado in order to extort confessions. . . . The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern. Unless a proper limitation upon custodial interrogation is achieved such as these decisions will advance there can be no assurance that practices of this nature will be eradicated in the foreseeable future.”

for oneself. It cannot be invoked in someone else's behalf; a person can be forced to "rat" on another.

The privilege does not protect a person from being fingerprinted or photographed, submitting a handwriting sample, or appearing in a police lineup. And, recall, it does not mean that a person does not have to submit to a blood test in a drunk-driving situation, *Schmerber v. California*, 1966.

A person cannot, however, be forced to confess to a crime under duress—that is, as a result of torture or other physical or psychological pressure. In *Ashcraft v. Tennessee*, 1944, for example, the Supreme Court threw out the conviction of a man accused of hiring another person to murder his wife. The confession on which his conviction rested had been secured only after some 36 hours of continuous, threatening interrogation. The questioning was conducted by officers who worked in shifts because, they said, they became so tired that they had to rest.

Miranda v. Arizona In a truly historic decision, the Court refined the Escobedo holding in *Miranda v. Arizona*, 1966. (See the Landmark Decisions of the Supreme Court feature on the next two pages.) In this case, a mentally challenged man, Ernesto Miranda, had been

convicted of kidnapping and rape. Ten days after the crime, the victim picked Miranda out of a police lineup. After two hours of questioning, during which the police did not tell him of his rights, Miranda confessed.

The Supreme Court struck down Miranda's conviction. More importantly, the Supreme Court said that it would no longer uphold convictions in any cases in which suspects had not been told of their constitutional rights before police questioning. It thus laid down the **Miranda rule**, or the constitutional rights that police must read to a suspect before questioning.

The Supreme Court is still refining the rule on a case-by-case basis. Most often the rule is closely followed. But there are exceptions. Thus, the Court has held that an undercover police officer posing as a prisoner does not have to tell a cell mate of his Miranda rights before prompting him to talk about a murder, *Illinois v. Perkins*, 1990.

The Miranda rule has always been controversial. Critics say that it "puts criminals back on the streets." Others applaud the rule, arguing that criminal law enforcement is most effective when it relies on independently secured evidence, rather than on confessions gained by questionable tactics from defendants who do not have the help of a lawyer.

Checkpoint
What does the Miranda rule require of police officers?

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Rights of the accused (Questions 1–6)	Have students write all the headings from the section on a sheet of paper, leaving room under each for notes. (The text under each heading in this section explains a right.) Have students fill in information under each heading that explains why that right is vital to people accused of crime.
Protection against self-incrimination (Question 7)	Ask students to write 10 quiz questions related to the guarantee against self-incrimination. For example, What does it mean to "take the Fifth"? Who can decide when an individual may claim the Fifth? Does the 5th Amendment prohibit being fingerprinted or appearing in a police lineup? Then have students exchange and complete one another's quizzes.

SECTION 3 ASSESSMENT

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

1. **Guiding Question** Use your completed graphic organizer to answer this question: What protections does the Constitution set out for persons accused of crimes?

Key Terms and Comprehension

- 2. (a) What does a writ of habeas corpus require? (b) When has the writ been suspended?
- 3. What are the three characteristics of an ex post facto law?
- 4. (a) Who bears the burden of proof in criminal cases? (b) What constitutional guarantee enforces this?

5. What rights to fair trial are guaranteed by the 6th Amendment?

Critical Thinking

- 6. **Express Problems Clearly** (a) What rights may come into conflict when a trial is televised? (b) Should television cameras be allowed in the courtroom? Why or why not?
- 7. **Identify Arguments** Why has the Miranda rule been both criticized and applauded?

Quick Write

Research Essay: Paraphrasing As you take notes on the case you selected in Section 1, paraphrase the source information by restating it in your own words. If you use the author's words, use quotation marks. You should cite your source even if you do not include a direct quote.

Assessment Answers

- 1. **5th Amendment:** grand jury in federal criminal cases, no double jeopardy, no self-incrimination; **6th Amendment:** right to speedy and public trial, impartial jury, adequate defense, be informed of nature and cause of accusation, confront witnesses, subpoena favorable witnesses, have access to a lawyer
- 2. (a) that a prisoner be brought before the court and that the holding officer show cause for not releasing the prisoner (b) during the Civil War and after the Japanese attack on Pearl Harbor

- 3. criminal law, applies to an act committed before its passage, works to the disadvantage of the accused
- 4. (a) the prosecution (b) 5th Amendment (no person can be "compelled in any criminal case to be a witness against himself")
- 5. right to prompt trial, right to public trial by an impartial jury, right to know charges, right to face witnesses, right to legally summon favorable witnesses, right to legal counsel
- 6. (a) fair trial versus freedom of the press (b) Students should provide reasons for their responses.

7. Critics say it puts criminals back on the streets. Supporters applaud reliance on independently secured evidence rather than on a coerced confession.

QUICK WRITE Remind students to limit direct quotes. Wording like "According to Jane Smith . . ." makes it clear that students are paraphrasing someone else's idea, but then they need to rewrite the idea in their own words.

Answers

Checkpoint to read a suspect his or her constitutional rights before questioning

LESSON GOAL

- Students will analyze the initial reaction to the Miranda rule, when it must be used, and why.

Teach

Have students read the feature as homework or at the beginning of class.

IDENTIFY MIRANDA RIGHTS

Have students draw a web diagram in their notebooks, with “Miranda Rights” in the center oval. Ask students to write, from memory, four Miranda rights in surrounding ovals. Point out that a fifth right is often added: “You may bring police questioning to an end at any time.” (See the Supreme Court Notes below.)

DISCUSS INITIAL REACTION

The Miranda rule is commonplace now. When the Supreme Court ruled on the case in 1966, however, the police community and citizens were outraged. Justice White, in a dissenting opinion, even stated: “I have no desire whatsoever to share the responsibility for any such impact on the present criminal process.” Ask students why they think this ruling caused such outrage. (*Criminals appeared to be set free on legal technicalities.*) Then pose these questions for discussion: **Can a society have too many rights? Is societal order more important than individual liberty?**

SKILLS DEVELOPMENT

PROBLEM SOLVING

Before students begin the brainstorming activity in this lesson, you may want to review the tips on problem solving in the Skills Handbook p. S17.

What Are the Rights of the Accused?

- You have the right to remain silent.
- Anything you say can and will be used against you in a court of law.
- You have the right to an attorney.
- If you cannot afford an attorney, one will be appointed for you.

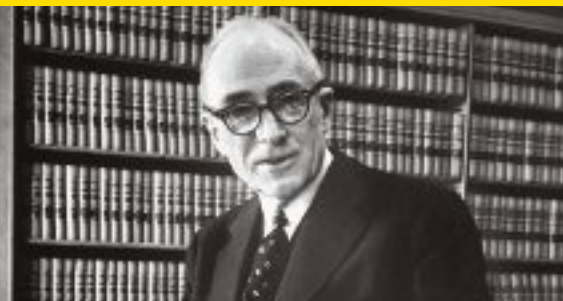
These words have been made famous by countless television dramas over the past forty years. They stem from the 5th and 6th amendments: “nor shall [any person] be compelled in any criminal case to be a witness against himself,” and “[the accused] shall have the Assistance of Counsel for his defence.” Often called the Miranda rights, they must be spoken to suspects before police interrogation.

In 1963, Ernesto Miranda was arrested at his home in Phoenix, Arizona. Accused of kidnapping and rape, he was questioned at the police station by two police officers. After two hours of interrogation, he signed a written confession. That confession was used at his trial, where Miranda was found guilty and sentenced to 20 to 30 years in prison. Miranda’s attorney appealed to the Supreme Court of Arizona, claiming that Miranda had not been informed of his right to remain silent or to have an attorney present during the interrogation. The Arizona Court upheld the conviction, however, noting that Miranda had not requested an attorney. The case was then appealed to the United States Supreme Court.

In a 5–4 decision, the Supreme Court overturned Miranda’s conviction. Chief Justice Earl Warren wrote the majority opinion, which centered on what happens when a suspect is taken into custody: “Today, then, there can be no doubt that the 5th Amendment privilege is available outside of criminal court proceedings and



The Supreme Court overturned the conviction of Miranda (right). He was retried without his confession but with witnesses and other evidence. Found guilty, he served 11 years.



Justice Harlan, dissenting, wrote: “The social costs of crime are too great to call the new rules anything but a hazardous experimentation.”

600

Supreme Court Notes

HALTING THE INTERROGATION If individuals waive their right to be silent or to have counsel, they may change their mind later. “Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.” (Chief Justice Earl Warren, *Miranda v. Arizona*)

serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored."

Arguments for Miranda

- Miranda was poor and uneducated. He did not know of his 5th Amendment right to remain silent nor his 6th Amendment right to counsel.
- Arizona ignored both the *Escobedo* rule (evidence obtained from an illegally obtained confession is inadmissible in court) and the *Gideon* rule (all felony defendants have the right to an attorney).
- Miranda's confession was illegally obtained and should be thrown out.
- Miranda's conviction was faulty, and he deserved a new trial.

Arguments for Arizona

- Miranda was no stranger to police procedures. He negotiated with police officers with intelligence and understanding.
- Miranda signed the confession willingly.
- The prosecution was proper, his conviction was based on Arizona law, and his imprisonment was just.
- The Arizona Supreme Court upheld his conviction and its rejection should not cripple the work of police.

Thinking Critically

1. Is it essential that a person be given the right to counsel during police interrogation as well as during the trial? Why or why not?
2. **Constitutional Principles** How does this case reflect the principle of limited government?



The *Miranda* ruling noted: "With a lawyer present the likelihood that the police will practice coercion is reduced."

The Miranda rights must be read to a suspect as soon as he or she has been restrained.

The Miranda rule has "become part of our national culture," *Dickerson v. United States*, 2000.

SPECIFY IN-CUSTODY INTERROGATION

Ask: **When must the Miranda rights be read to a suspect? (before in-custody interrogation) Must the Miranda rights be stated before questioning witnesses to a crime? (no) Why not? (because witnesses are not under restraint or in police custody) Why do you think in-custody interrogation requires extra rights?** Read aloud Chief Justice Warren's statement: "An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces . . . cannot be otherwise than under compulsion to speak."

BRAINSTORM ALTERNATIVE METHODS

Have students brainstorm possible alternative rules that would allow police to better obtain confessions constitutionally. Before students brainstorm, write this statement on the board:

The quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of its criminal law. (W.V. Schaefer, *Harvard Law Review*, 1956)

L1 L2 Differentiate Have students raise their hands when they have a point they wish to make. Call on lower-level students first to ensure that they participate in the discussion.

EXTEND THE LESSON

L3 L4 Differentiate Assign the Landmark Decisions of the Supreme Court Worksheet (Unit 5 All-in-One, p. 173).

L2 Differentiate Assign the adapted Landmark Decisions of the Supreme Court Worksheet (Unit 5 All-in-One, p. 175).

Assess and Remediate

Have students write several paragraphs describing (1) what the Miranda rights are; (2) when they must be stated and why; and (3) whether they think the Miranda rule does more good in protecting criminals or more harm in neglecting crime victims.

IN THE NEWS

Students can learn more about *Miranda v. Arizona* by visiting PearsonSuccessNet.com.

Answers

1. Yes. The presence of a lawyer during interrogation will reduce the possibility of police coercion.
2. by requiring government (law enforcement) to use proper procedures to solve crime

Supreme Court Notes

REFINING THE MIRANDA RULE *Missouri v. Seibert*, 2004, centered on what lately had become fairly common police practice: two-step interrogations, also known as "rehearsed confessions." Police officers had questioned Patrice Seibert, drawing out details of the fire she had set to cover up the murder of her son. Then she was told of her Miranda rights—and questioned again. That second round was taped, and she was asked questions based on the incriminating statements she had made in the first—untaped, unwarned—round. She confessed again. The Supreme Court found that her confession had been coerced and so was invalid. It struck down the two-step practice, saying that it threatened the very purpose of *Miranda*.

GUIDING QUESTION

How does the Constitution set limits on punishments for crime?

Punishment
8th Amendment Limits
<ul style="list-style-type: none">• “Excessive bail shall not be required, nor excessive fines imposed. . . .”• forbids “cruel and unusual punishment”

Get Started

LESSON GOALS

Students will . . .

- examine how the Court’s interpretation of “cruel and unusual punishment” has changed over time by analyzing court cases on the death penalty.
- analyze and evaluate arguments on the constitutionality of juvenile capital punishment by analyzing Supreme Court opinions and editorials on this issue.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 163) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 164)

BELLRINGER

Display Transparency 20G, Death Penalty in the United States. Have students answer the questions in their notebooks.

SKILLS DEVELOPMENT

ANALYZE POLITICAL CARTOONS

To help students learn to analyze political cartoons, have them turn to the Skills Handbook, p. S22, and use the steps explained there to complete the Political Cartoon Mini-Lesson.

SECTION 4

Punishment



Guiding Question
How does the Constitution set limits on punishments for crime?
Use a table like the one below to take notes on the section.

Punishment
8th Amendment Limits
<ul style="list-style-type: none">••

- Political Dictionary**
- bail
 - preventive detention
 - capital punishment
 - treason

- Objectives**
1. Explain the purpose of bail and preventive detention.
 2. Describe the Court’s interpretation of cruel and unusual punishment.
 3. Outline the history of the Court’s decisions on capital punishment.
 4. Define the crime of treason.

Image Above: A bar advocate reviews her client’s paperwork before his or her bail hearing.

Again, think about this proposition: “It is better that ten guilty persons go free than that one innocent person be punished.” How do you react to that comment now, after reading about the rights of persons accused of crime? Consider those persons who are found guilty, those who do not go free but are instead punished. How should they be treated? The Constitution gives its most specific answers to that question in the 8th Amendment.

Bail and Preventive Detention

The 8th Amendment says, in part:

FROM THE CONSTITUTION
Excessive bail shall not be required, nor excessive fines imposed, . . .

Each State constitution sets out similar restrictions. The general rule is that the bail or fine in a case must bear a reasonable relationship to the seriousness of the crime involved.

Bail The sum of money that the accused may be required to post (deposit with the court) as a guarantee that he or she will appear in court at the proper time is called **bail**. The use of bail is justified on two bases: First, that a person should not be jailed until his or her guilt has been established; and second, that a defendant is better able to prepare for trial outside of a jail.

Note that the Constitution does not say that all persons accused of a crime are automatically entitled to bail. Rather, it guarantees that, where bail is set, the amount will not be excessive.

The leading case on bail in the federal courts is *Stack v. Boyle*, 1951. There, the Court ruled that “bail set at a figure higher than an amount reasonably calculated” to assure a defendant’s appearance at a trial “is ‘excessive’ under the 8th Amendment.” In *Stack*, 12 persons had been accused of violating the Smith Act of 1940, which, recall, made it a federal crime for any person to advocate the violent overthrow of government in the United States. (See Chapter 19, Section 3.)

Focus on the Basics

FACTS: • The 8th Amendment addresses the issue of punishment for crime. • The Supreme Court has consistently held that the death penalty is constitutional if it is applied fairly. • The crime of treason is specifically defined in Article III of the Constitution to prevent its use for political purposes.

CONCEPTS: individual rights, due process of law, judicial review

ENDURING UNDERSTANDINGS: • The 8th Amendment bans excessive bail and fines and cruel and unusual punishment. • Although the Supreme Court has ruled that the death penalty does not constitute cruel and unusual punishment, the question of capital punishment continues to be debated.

A defendant can appeal the denial of release on bail or the amount of bail. Bail is usually set in accordance with the severity of the crime charged and with the reputation and financial resources of the accused. People with little or no income often have trouble raising bail. Therefore, the federal and most State courts release many defendants “on their own recognizance”—that is, on their honor. Failure to appear for trial, “jumping bail,” is itself a punishable crime.

Preventive Detention In 1984, Congress provided for the **preventive detention** of some people accused of federal crimes. A federal judge can order that the accused be held, without bail, when there is good reason to believe that he or she will commit another serious crime before trial.

Critics of the law claim that preventive detention amounts to punishment before trial. They say it undercuts the presumption of innocence to which all defendants are entitled.

The Supreme Court upheld the 1984 law, 6–3, in *United States v. Salerno*, 1987. The majority rejected the argument that preventive detention is punishment. Rather, it found the practice a **legitimate** response to a “pressing societal problem.” The Court held that, “There is no doubt that preventing danger to the community is a legitimate regulatory goal.” All of the States have adopted preventive detention laws.

Cruel and Unusual Punishment

The 8th Amendment also forbids “cruel and unusual punishment.” The 14th Amendment extends that prohibition against the States, *Robinson v. California*, 1962.

The Supreme Court decided its first cruel and unusual case in 1879 in *Wilkinson v. Utah*. There, a territorial court had sentenced a convicted murderer to death by a firing squad. The Court held that this punishment was not forbidden by the Constitution. The kinds of penalties the Constitution intended to prevent, said the Court, were such barbaric tortures as burning at the stake, crucifixion,

drawing and quartering, “and all others in the same line of unnecessary cruelty.” The Court took the same position a few years later when, for the first time, it upheld the electrocution of a convicted murderer in a case from New York, *In re Kemmler*, 1890.

Since then, the Court has heard only a handful of cruel and unusual cases, except for those relating to capital punishment. More often than not, it has rejected the cruel and unusual punishment argument.¹⁴ *Louisiana v. Resweber*, 1947, is fairly typical. There, the Court found that it was not unconstitutional to subject a convicted murderer to a second electrocution after the chair had failed to work properly on the first occasion. And in *Rhodes v. Chapman*, 1980, it held that putting two inmates in a cell that had been designed to hold only one did not violate the constitutional command.

The Court also denied the cruel and unusual claim in its most recent 8th Amendment case not involving the death penalty,

¹⁴ The prohibition of cruel and unusual punishments is limited to criminal matters. It does not forbid paddling or similar punishments in the public schools, *Ingraham v. Wright*, 1977.

legitimate
adj. valid, sound, lawful

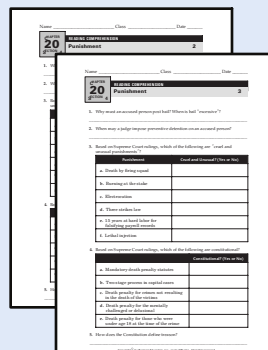


► **Analyzing Political Cartoons** The 8th Amendment forbids cruel and unusual punishment. **What point is the cartoonist making here?**

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 20, Section 4:

- L3** Reading Comprehension Worksheet (p. 163)
- L2** Reading Comprehension Worksheet (p. 164)
- L3** Core Worksheet A (p. 165)
- L3** Core Worksheet B (p. 167)
- L3** Quiz A (p. 171)
- L2** Quiz B (p. 172)
- L3** Chapter Test A (p. 177)
- L2** Chapter Test B (p. 180)



Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

REVIEW BELLRINGER ANSWERS

Have students discuss the Bellringer questions. Ask: **What can you infer about American attitudes toward the death penalty?** (*Almost three-fourths of the States have the death penalty for people convicted of murder. Students may infer that almost 75 percent of Americans favor the death penalty. However, a recent Gallup poll showed these results: 47 percent prefer the death penalty; 48 percent prefer life without parole; and 5 percent had no opinion.*) **Does your state have the death penalty?** Have students discuss their thoughts about this situation.

DEFINE “CRUEL AND UNUSUAL”

Have students define what they consider cruel and unusual punishment regarding sentencing for persons convicted of crime. Use a Think-Pair-Share strategy (p. T22) to give students a chance to express their thoughts. After students have discussed the issue with a partner, have each pair share its opinions with the class. Then ask students to arrive at a consensus definition of cruel and unusual punishment.

DISCUSS CHANGES IN PUNISHMENT

Point out that the Supreme Court’s interpretation of what constitutes “cruel and unusual punishment” has changed over time. List on the board these forms of punishment commonly used in the American colonies: whipping, branding a hand with a T for thief or M for manslaughter, cutting off ears, standing in stocks, public hangings. Ask: **Which of these would have been considered “cruel and unusual punishment” in early colonial America?** (*none of them*) **Which of these punishments would be considered cruel and unusual today?** (*all of them*) **Why do you think attitudes about what constitutes cruel and unusual punishment have changed over time?** (*possible answers: reformers publicized the ineffectiveness of various punishments as a deterrent to crime; the perception that electrocution or lethal injection is a more clinical and humane form of capital punishment*)

Answers

Caption that being incarcerated in an overcrowded prison would not qualify as “cruel and unusual punishment”

ANALYZE COURT DECISIONS

Ask these questions to help students understand how judicial decisions have helped define what is and is not cruel and unusual punishment.

- *Wilkerson v. Utah*, 1879: **How did the Court define cruel and unusual punishment in this case?** (*burning at the stake, crucifixion, drawing and quartering, other forms of “unnecessary cruelty”*)

- *In re Kemmler*, 1890, and *Louisiana v. Resweber*, 1947: **How were the rulings in these cases similar?** (*In both cases, the justices ruled that electrocution was not cruel and unusual punishment.*)

- *Weems v. United States*, 1910, and *Robinson v. California*, 1962: **In what ways were the rulings in these cases similar?** (*The Court ruled that the actions taken by the government were cruel and unusual punishment. Weems was given 15 years hard labor chained at ankle and wrist. Robinson was imprisoned for narcotics addiction.*)

- *Coker v. Georgia*, 1977, *Atkins v. Virginia*, 2002, *Roper v. Simmons*, 2005: **Did the Supreme Court’s rulings in these cases expand or limit capital punishment?** (*limit; ruled that the death penalty can be imposed only in murder cases and cannot be imposed on people who are mentally challenged or were under age 18 when they committed crimes*)

Then ask: **What conclusion can you draw about the makeup of the Court and the definition of cruel and unusual punishment?** (*Students should conclude that judicial philosophy affects Court decisions on this controversial issue.*)

DISCUSS JUVENILE CAPITAL PUNISHMENT


Use an Opinion Line (p. T26) as a starting point for a discussion of capital punishment for juveniles. Put up signs at the beginning, middle, and end of the line that say: Limited Sentence with Parole, Life Sentence without Parole, and Death Penalty. Ask students to stand closest to the sign that expresses their opinion about sentencing for convicted murderers age 18 and younger. Ask volunteers to explain why they have chosen their positions.

ANALYZE A JUVENILE CAPITAL CASE

Distribute the Chapter 20 Section 4 Core Worksheet A (Unit 5 All-in-One, p. 165), which presents the majority and dissenting opinions in *Roper v. Simmons*. Have students answer the questions on the worksheet and discuss the opinions as a class.

Answers

Checkpoint It struck down all of the then-existing State laws providing for the death penalty because they gave too much discretion to judges or juries in deciding whether to impose the death penalty.

 **Checkpoint**
What was the significance of the Court's ruling in *Furman v. Georgia*?

capriciously
adv. unpredictably; erratically, without reason

Lockyer v. Andrade, 2003. That case centered on California's "three strikes" law. That statute provides that any person convicted of a third crime must be sentenced to at least 25 years in prison. Leandro Andrade had received 50 years for stealing \$153.54 worth of children's videos from two K-Mart stores. The K-Mart thefts were treated as separate offenses and he had an earlier burglary conviction on his record, as well.

The Court has held some punishments to be cruel and unusual, but only a very few. It did so for the first time in *Weems v. United States* in 1910. There, the Court overturned the conviction of a Coast Guard official who had been found guilty of falsifying government pay records. He had been sentenced to 15 years at hard labor, constantly chained at wrist and ankle. In *Robinson v. California*, 1962, the Court ruled that a State law that defined narcotics addiction as a crime to be punished, rather than an illness to be treated, violated the 8th and 14th amendments.¹⁵

Capital Punishment

Laws providing for **capital punishment**—the death penalty—date back to at least the 18th century B.C. and the Code of Hammurabi, which set death as the penalty for more than 25 different offenses.¹⁶ The punishment has been a part of American law since the colonial period, and both the Federal Government and 36 States provide for it today.

Over time, the Supreme Court was reluctant to face this highly charged question: Is capital punishment cruel and unusual and therefore prohibited by the 8th Amendment?

State Laws Struck Down The Court did meet the issue, finally, and more or less directly, in *Furman v. Georgia*, 1972. There, it struck down all of the then-existing State laws providing for the death penalty—but not because that punishment is cruel and unusual.

¹⁵ But, notice, that does not mean that buying, selling, or possessing narcotics cannot be made a crime. Laws that criminalize such conduct are designed to punish persons for their behavior, not for being ill.

¹⁶ The phrase "capital punishment" comes from the Latin *caput*, meaning "head"; in many cultures, the historically preferred method for execution was beheading (decapitation).

Rather, the Court voided those laws because they gave too much discretion to judges or juries in deciding whether to impose the ultimate penalty. The Court found that of all the people convicted of capital crimes, only "a random few," most of them African American or poor, or both, were "**capriciously** selected" for execution.

Immediately, most States and Congress began to write new capital punishment laws. Those new statutes took one of two forms. Several States made a death sentence mandatory for certain crimes—for example, the killing of a police officer or a murder committed during a rape, kidnapping, or arson. Others provided, instead, for a two-stage process in capital cases: first, a trial to settle the question of guilt or innocence; then, for those convicted, a second proceeding to decide if the circumstances involved in the crime justify a sentence of death.

In considering scores of challenges to these new laws, the Supreme Court found mandatory death penalty statutes unconstitutional. In *Woodson v. North Carolina*, 1976, it ruled that those statutes were "unduly harsh and rigidly unworkable." They were, said the Court, simply attempts to "paper over" the decision in *Furman*.

Two-Stage Approach Upheld The two-stage approach was found to be constitutional in *Gregg v. Georgia*, 1976. There, the Court held for the first time that the "punishment of death does not invariably violate the Constitution." It declared that well-drawn two-stage laws could practically eliminate "the risk that it [the death penalty] would be inflicted in an arbitrary or capricious manner."

Later Cases Opponents of the death penalty continue to appeal capital cases to the Supreme Court, but to no real avail. Most of their cases have centered on the application, not the constitutionality, of the punishment. The more important of those several cases have resulted in these rulings: The death penalty can be imposed only for "crimes resulting in the death of the victim," *Coker v. Georgia*, 1977. That penalty cannot be imposed on those who are mentally challenged, *Atkins v. Virginia*, 2002, or on those who were

Background

ELECTROCUTION Before 1888, hanging was the most common way in which those on death row were executed. Some considered it a form of "cruel and unusual punishment." The electric chair was developed in 1887 as a result of a rivalry between Thomas Edison and Westinghouse. In trying to promote his DC electricity, Edison proved that AC electricity, used by Westinghouse, could easily kill people and animals exposed to it. While doing this, he proposed the idea for an "electric chair" for capital punishment using AC, thinking that people would not want the same type of electricity in their homes. Electrocution was adopted by many States, yet contrary to Edison's plans, AC still became the main type of current used across the country.

Capital Punishment Debate

Capital punishment has a lengthy history, and so does the controversy surrounding it. The punishment has been a part of American law since the colonial period, and 36 States provide for it today. Nearly 1,100 persons have been executed in the United States since the Supreme Court reinstated capital punishment in 1976. Fewer than three in every 100 death sentences imposed are ever carried out, however. Forty-two persons were executed in ten States in 2007. More than 3,200 persons sit on death row in American prisons today. *Do you think the maximum penalty for murder should be death or, instead, life without the possibility of parole? Explain.*



“Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view. We may nevertheless assume safely that there are murderers, such as those who act in passion, for whom the threat of death has little or no deterrent effect. But for many others, the death penalty undoubtedly is a significant deterrent.”

—Justice Potter Stewart, *Gregg v. Georgia*, 1976

“One area of law more than any other besmirches the constitutional vision of human dignity. . . . The barbaric death penalty violates our Constitution. Even the most vile murderer does not release the state from its obligation to respect dignity, for the state does not honor the victim by emulating his murderer. Capital punishment’s fatal flaw is that it treats people as objects to be toyed with and discarded. . . . One day the Court will outlaw the death penalty. Permanently.”

—William J. Brennan, former U.S. Supreme Court Justice, 1996

under the age of 18 when their crimes were committed, *Roper v. Simmons*, 2005.

The question of whether the ultimate penalty is to be imposed must be decided by the jury that convicted the defendant, not the judge who presided at the trial, *Ring v. Arizona*, 2002.

And, most recently, these holdings: A delusional person who cannot understand why he has been sentenced to death cannot be executed, *Panetti v. Quarterman*, 2007. Execution by lethal injection, the method most widely used today, does not violate the 8th Amendment, *Baze v. Rees*, 2008. The sum of the Court’s many decisions over the past thirty years or so comes down to

this: The death penalty, fairly applied, is constitutional.

Continuing Controversy Even so, capital punishment remains controversial. Public opinion polls do show that there is support for it. However, many of those supporters express misgivings about the fairness with which it is applied.

Clearly, the application of the death penalty must be closely monitored to protect the innocent and prevent wrongful convictions. The Death Penalty Information Center reports that over the past 30 years, some 125 persons who had been sentenced to death have been exonerated and released from prison.

exonerate
v. to free from a charge, absolve

Tell students to go to the Audio Tour for a guided audio tour of the capital punishment arguments.

EVALUATE EDITORIALS

Organize students into four groups. Distribute Chapter 20 Section 4 Core Worksheet B (Unit 5 All-in-One, p. 167), and assign each group one of the editorials based on skill level: Editorial A is for L3 students; Editorial B is for L4 students; Editorials C and D are for L2 students. Each group should analyze its editorial and answer the worksheet questions on a separate sheet of paper. Have a spokesperson from each group explain its editorial to the rest of the class. Ask students whether they agree or disagree with the editorials as they are presented.

L3 Differentiate After all groups have completed their worksheets, write “Juvenile Capital Punishment” on the board. Underneath, make two columns labeled “Arguments For” and “Arguments Against.” Ask each group to list statements from its editorial in the appropriate column.

Name _____ Class _____ Date _____

CHAPTER 20
SECTION 4

CORE WORKSHEET B
Punishment

3

The four editorials below comment on the death penalty case of *Roper v. Simmons*, 2005. Read the editorial your group has been assigned. Then, on a separate sheet of paper, answer the questions that follow. (Note that Editorials A and C were written before the Supreme Court ruled on the case.)

Editorial A—“Court Should End Juvenile Executions,” *Kansas City Star*, July 27, 2004

“Justices would erase an outrage by abolishing the death penalty for people who commit crimes as juveniles. Besides the United States, only China, Pakistan, Iran and the Democratic Republic of the Congo permit executions for offenses by 16- and 17-year-olds. In this country, 31 states, including Kansas, have laws exempting juveniles from capital punishment.

“The Missouri Supreme Court tried to move the state in the right direction last year by ruling that the execution of juvenile offenders violated the state constitution’s ban on cruel and unusual punishment. That ruling relied on a 2002 U.S. Supreme Court decision that outlawed the execution of offenders who are mentally retarded. The state judges contended that the ‘national consensus’ against executing people who are mentally retarded also applied to juveniles. . . . Missouri Attorney General Jay Nixon . . . appealed the state Supreme Court decision. He said it was the legislature’s job to decide legal ages for the death penalty.

“A broad coalition of religious, medical and psychiatric groups have filed briefs with the U.S. Supreme Court appealing for a ban on executions for crimes committed by juveniles. These groups presented compelling testimony that juveniles have less capacity than adults to reason and consider consequences.

“The court also received briefs from the European Union and dozens of countries, including Canada and Mexico. They contended that the execution of juveniles isolated the United States from the international community.

“If this death sentence were revoked, Simmons would still spend the rest of his life in prison for the heinous 1993 murder of Shirley Crook, 46. No court ruling can right that enormous wrong. But capital punishment for crimes committed by the young is another wrong—one that Supreme Court justices can stop.”

Analyze Editorial A

1. What position does this writer take on the death penalty for juveniles?
2. List three arguments the writer uses to support this opinion.
3. What evidence does the writer give to support each argument?
4. Do you agree with the opinion expressed in this editorial? Why or why not?

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EXTEND THE LESSON

L3 Differentiate Ask students to act out two scenarios in pairs. In the first scenario, one student will be a lawyer explaining to a suspected client his or her right to bail as well as possible preventive detention. In the second scenario, students will switch roles. The lawyer will explain possible penalties to the client if he or she is convicted. In their role as lawyers, students should cite cases from the text.

Answers

Capital Punishment Debate Answers will vary, but students’ opinions should show evidence of careful reasoning.

Political Cartoon Mini-Lesson

Point out that when deciding whether a punishment is cruel and unusual, the Supreme Court considers what Chief Justice Earl Warren described as “evolving standards of decency in a civilized society.” Justices often look at the laws on capital punishment passed by State legislatures, at how juries have voted in death penalty cases, and at the results of opinion polls that reflect society’s views on the death penalty. Display Transparency 20H, featuring two political cartoons with different views toward punishment. Ask: **What is the message in Cartoon A?** (*pro-punishment; Victims of crime should be treated justly and their plight acknowledged.*) **In Cartoon B?** (*anti-punishment; All capital punishment, and lethal injection, is murder.*) **Which recent case considered the cruel and unusual aspect of lethal injection?** (*Baze v. Rees*) Have students write a journal entry describing their opinions on the death penalty.

Checkpoint
Who may be convicted of treason? What is the maximum penalty for this crime?

L2 Differentiate Have volunteers poll others about whether they are for or against the death penalty for juveniles convicted of murder. Pollsters should include the age and gender of each respondent. Have students present their findings in a bar graph, noting whether age or gender made a difference in responses.

Assess and Remediate

L3 Ask students to summarize the 8th Amendment and Article III, Section 3, in their own words.

L3 Collect the Core Worksheets and assess students' work.

L3 Assign the Section 4 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 171)

L2 Section Quiz B (Unit 5 All-in-One, p. 172)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Punishments set by the Constitution (Questions 1, 2, 5, 6)	Have students research to find answers to these questions: Who sets the amount of bail? In what situations is bail denied? Who determines preventive detention and treason?
The debate over capital punishment (Questions 3, 4, 7)	Ask students to write a true-or-false quiz with ten questions concerning Supreme Court rulings on capital punishment. Have students exchange and complete one another's quizzes.

Answers

Checkpoint all U.S. citizens at home or abroad and all permanent resident aliens; the death penalty

As retired Supreme Court Justice Sandra Day O'Connor has observed: "If statistics are any indication, the system may well be allowing some innocent defendants to be executed."

That fact has also prompted many who support capital punishment to insist that the remedies for whatever problems there may be in the administration of the penalty should not be found in its abolition. They should be found, instead, in the continuing improvement of the processes by which the ultimate penalty is imposed.

Treason

Treason against the United States is the only crime defined in the Constitution. The Framers provided a specific definition because they knew that the charge of treason is a favorite weapon in the hands of tyrants.

Treason, says Article III, Section 3, can consist of only two things: either (1) levying war against the United States or (2) "adhering to their Enemies, giving them Aid and Comfort." And the Constitution adds that no person can be convicted of the crime "unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

The law of treason covers all citizens of the United States, at home or abroad,

and all permanent resident aliens. Congress has set death as the maximum sentence for someone convicted of the federal crime but no person has ever, in fact, been executed for that offense. Indeed, the death penalty was not imposed in a federal treason case until as recently as 1942. Then, four German-born American citizens were sentenced to be hanged for aiding a group of Nazi saboteurs who had been landed on the East Coast by a German submarine. But those sentences were never carried out.¹⁷

Treason can only be committed in wartime. But Congress has made it a crime, during times of either peace or war, to commit either espionage or sabotage, to attempt to overthrow the government by force, or to conspire to do any of these things.

Most State constitutions also condemn treason. John Brown was hanged as a traitor by Virginia after his raid on Harpers Ferry in 1859. He is believed to be the only person ever executed for treason against a State.

¹⁷ The sentence of one of the traitors was commuted to life in prison; he was later denaturalized and then deported. The other three appealed their convictions and won new trials. One of them was again convicted of treason but this time sentenced to life in prison; the other two pleaded guilty to lesser charges and received five-year prison terms.

SECTION 4 ASSESSMENT

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

1. Guiding Question Use your completed graphic organizer to answer this question: How does the Constitution set limits on punishments for crime?

Key Terms and Comprehension

- (a)** Define **bail**. **(b)** What is its purpose? **(c)** When is the use of bail justified?
- What penalties has the Court considered cruel and unusual?
- (a)** When did the court first hear a **capital punishment** case? What was the ruling in this case? **(b)** What is the two-stage process?

- (a)** Define **treason**. **(b)** Why does the Constitution contain a specific definition of treason?

Critical Thinking

- Identify Point of View** Why do some oppose preventive detention? **(b)** Why has the Supreme Court upheld it? **(c)** With which point of view do you agree? Why?
- Demonstrate Reasoned Judgment** **(a)** In capital cases, who cannot be sentenced to death? **(b)** Do you agree with the Court's ruling that mandatory death sentences are unconstitutional? Why or why not?

Quick Write

Research Essay: Opening Statement Write an opening statement, or hook, for an essay on the case you selected in Section 1. A hook should grab readers' interest. Various types of hooks motivate further reading. These include (1) a statement that hints at what is to come; (2) a fascinating description of an exciting event or action; or (3) a question that will be answered later in the essay. Your hook should connect smoothly to the introduction and the body of your essay.

Assessment Answers

- The 8th Amendment prohibits excessive bail and fines and forbids cruel and unusual punishment.
- (a)** sum of money the accused is required to deposit with the court **(b)** to guarantee that the person will appear in court at the proper time **(c)** when it is not excessive
- barbaric tortures such as burning at the stake, crucifixion, drawing and quartering
- (a)** 1972, in *Furman v. Georgia*; the Court struck down all of the then-existing State laws providing for the death penalty **(b)** a trial to

settle guilt or innocence; after conviction, a proceeding to decide if the crime justifies death sentence

- (a)** levying war against the U.S. or giving aid and comfort to enemy **(b)** The Framers knew that a charge of treason was a favorite weapon in the hands of tyrants.
- (a)** They claim it is punishment before trial. **(b)** as a legitimate response to a pressing societal problem **(c)** Answers will vary.
- (a)** those who are mentally challenged, under age 18, or delusional **(b)** Possible answer: A

mandatory death sentence for a particular crime does not allow the court to consider the circumstances involved in individual cases, such as self-defense.

QUICK WRITE After writing their opening statement, students should review its effectiveness by asking themselves these questions: What question does the hook prompt readers to ask? How does it connect to the rest of the story?

Guiding Question

Section 2 How does the Constitution protect the freedom and security of the person?

Guiding Question

Section 3 What protections does the Constitution set out for persons accused of crimes?

Guiding Question

Section 1 Why is the concept of due process important to a free society?

CHAPTER 20

Essential Question

To what extent has the judiciary protected the rights of privacy, security, and personal freedom?

Guiding Question

Section 4 How does the Constitution set limits on punishments for crime?

Political Dictionary

due process p. 578
procedural due process p. 578
substantive due process p. 578
police power p. 580
search warrant p. 581
involuntary servitude p. 583
discrimination p. 584
writ of assistance p. 585
probable cause p. 586
exclusionary rule p. 588
writ of habeas corpus p. 592
bill of attainder p. 593
ex post facto law p. 593
grand jury p. 594
indictment p. 594
presentment p. 594
information p. 595
double jeopardy p. 595
bench trial p. 597
Miranda Rule p. 599
bail p. 602
preventive detention p. 603
capital punishment p. 604
treason p. 606

Protections of Freedom and Security

13th Amendment:

"Neither slavery nor involuntary servitude, . . . shall exist within the United States, or any place subject to their jurisdiction."

2nd Amendment:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

4th Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

14th Amendment's Due Process Clause:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ."

Limits on Punishment

8th Amendment

- "Excessive bail shall not be required, nor excessive fines imposed. . . ."
- Forbids "cruel and unusual punishment"



Have students download the digital resources available at Government on the Go for review and remediation.

STUDY TIPS

Taking Multiple Choice Tests When taking multiple choice tests, students should scan the entire document before they begin, noting the number of questions and their point values. They can then use this information to pace themselves. For each question, caution students to read all the choices before selecting an answer, eliminating those choices they know to be wrong. Suggest the following strategy: Cover up the answers and try to anticipate the correct answer. If your answer is among the choices, circle it but then read the others to make sure none is better. When "all of the above" is a choice, it is probably the correct answer if at least two choices are correct. Recommend that students not skip questions they are unsure about, however—this increases the chances of forgetting to go back and answer some questions. Instead, have them answer as best they can and then mark the question to return to if time permits.

ASSESSMENT AT A GLANCE

Tests and Quizzes

Section Assessments
Section Quizzes A and B, Unit 5 **All-in-One**
Chapter Assessment
Chapter Tests A and B, Unit 5 **All-in-One**
Document-Based Assessment
Progress Monitoring Online
ExamView Test Bank

Performance Assessment

Essential Questions Journal
Debates, pp. 588, 596
Assessment Rubrics, **All-in-One**

For More Information

To learn more about civil liberties, refer to these sources or assign them to students:

- L1 Smith, Rich.** *Fifth Amendment: The Right to Fairness*. ABDO & Daughters, 2007.
- L2 Winters, Robert, ed.** *The Bill of Rights—Freedom from Unfair Searches and Seizures*. Gale Group, 2005.
- L3 Orth, John V.** *Due Process of Law: A Brief History*. University Press of Kansas, 2003.
- L4 Zimring, Franklin E.** *The Contradictions of American Capital Punishment*. Oxford University Press, 2004.

Chapter Assessment

COMPREHENSION AND CRITICAL THINKING

SECTION 1

- (a) to protect due process rights from both the federal and State governments
(b) police officers acting on a tip instead of probable cause; violating privacy without a warrant; attempting to obtain evidence by attacking the suspect and by forcing the suspect to submit to stomach pumping
- (a) States (b) Students should provide examples of the use of the police power to promote their own health, safety, morals, and general welfare.
- (a) issues of abortion (b) Answers will vary.

SECTION 2

- (a) 4th Amendment (b) Officers must obtain a search warrant based on probable cause before a search and seizure.
- (a) Court ruled that the 13th Amendment did not prohibit discrimination by individuals. (b) Court strengthened the 13th Amendment by holding that discrimination was a badge of slavery and, so, illegal.
- (a) yes, if they have probable cause (b) no (c) *California v. Acevedo*; *Brendlin v. California*
- arguments for: requires police to obey the law and deters police misconduct; arguments against: allows criminals to "beat the rap" on a technicality

SECTION 3

- (a) legislative act that provides for the punishment of a person without a court trial (b) requires that an accused person be punished after breaking a law but not be punished by a law itself; also enforces that the accused receive a fair trial
- (a) grand jury: 16 to 23 jurors in a federal case; jurors must be drawn from the district court area that it serves; at least 12 jurors needed to return an indictment; sessions are secret; only the prosecution presents before the grand jury; petit jury: jurors must be drawn from the district where crime was committed; must have 12 members in a federal criminal case; must convict by a unanimous vote; members must be drawn from a fair cross section of the community (b) Answers will vary.
- (a) Police must read a suspect his or her constitutional rights before questioning. (b) 5th and 6th amendments

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Chapter Assessment

GOVERNMENT ONLINE
Self-Test
To test your understanding of key terms and main ideas, visit
PearsonSuccessNet.com

Comprehension and Critical Thinking

Section 1

- (a) Why are there two due process clauses in the Constitution? (b) In *Rochin v. California*, what particular actions by the deputies constituted violations of due process?
- (a) Which level of government has the police power in the federal system? (b) Provide at least four examples of the ways in which the exercise of the police power affects you.
- (a) In what area has the right to privacy been most controversial? (b) Should the right to privacy be applied to the Census Bureau, credit card companies, and Internet sites as they collect personal information? Why or why not?

Section 2

4. Analyze Political Cartoons (a) Which amendment is involved in the events described in this cartoon? (b) What is the basic rule laid down by that amendment?



Apply What You've Learned

14. Essential Question Activity Scan the newspaper for articles concerning any guarantees of the rights of the accused shown in the illustration in Section 3 of this chapter. Prepare a brief report describing the article and the right(s) in question. Indicate how you think the issue or case should be resolved and why.
15. Essential Question Assessment Based on the brief report you wrote and the content you have learned in the chapter, create a poster that helps to answer the Essential Question: **To what extent has the judiciary protected the rights of privacy, security, and**

personal freedom? Your poster should list the rights of privacy, security, and/or personal freedom related to your everyday life, i.e., in your home, automobile, on your computer and/or phone. On a separate piece of paper, write a paragraph that outlines the extent to which each freedom is protected.

Essential Questions Journal To respond to the chapter Essential Question, go to your Essential Questions Journal.

SECTION 4

11. (a) Where bail is set, the amount shall not be excessive. (b) in accordance with the severity of the crime charged and with the reputation and financial resources of the accused (c) The defendant either remains in jail or the courts may release a defendant on his or her own recognizance, or honor.
12. (a) It struck down all the then-existing State laws providing for the death penalty. (b) The death penalty, if applied fairly, is constitutional.

WRITING ABOUT GOVERNMENT

13. Remind students that an informative writing style includes answers to these questions: What happened? Who was involved? Where did this occur? When did it occur? Why did it happen? Students should also include answers to this question: How did it affect the rights of the accused?

APPLY WHAT YOU'VE LEARNED

14. Students' reports should focus on the rights of the accused. Summaries should be accurate and include all relevant points; opinions should be backed with precedents.

Document-Based Assessment

CHAPTER 20

The Patriot Act

The Patriot Act was enacted “to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.” Debate centers around whether it provides a balance between national security and the Constitution’s guarantees of individual freedom, as shown in the documents below.

Document 1

“The law allows our intelligence and law enforcement officials to continue to share information. It allows them to continue to use tools against terrorists that they . . . use against drug dealers and other criminals. It will improve our nation’s security while we safeguard the civil liberties of our people. The legislation strengthens the Justice Department so it can better detect and disrupt terrorist threats.

—President George W. Bush, March 2006

Document 2

“Just 45 days after the September 11 attacks, with virtually no debate, Congress passed the USA PATRIOT Act. There are significant flaws in the Patriot Act, flaws that threaten your fundamental freedoms by giving the government the power to access your medical records, tax records, information about the books you buy or borrow without probable cause, and the power to break into your home and conduct secret searches without telling you for weeks, months, or indefinitely.

—American Civil Liberties Union

Document 3

“Delayed notification search warrants are a long-existing, crime-fighting tool upheld by courts nationwide for decades in organized crime, drug cases and child pornography. The Patriot Act simply codified the authority law enforcement had already had for decades. This tool is a vital aspect of our strategy of prevention-detecting and incapacitating terrorists before they are able to strike.

—U.S. Department of Justice

Document 4



Use your knowledge of the Patriot Act and Documents 1–4 to answer the following questions.

- Document 1 implies that the overriding goal of the Patriot Act is to
 - strengthen the Justice Department.
 - allow law enforcement and intelligence officials to share information.
 - safeguard civil liberties.
 - improve the nation’s security.
- According to Document 2, what does the Patriot Act give government the power to do?
- How does Document 3 justify the use of delayed notification search warrants?
- What is the cartoonist saying about the Patriot Act in Document 4?
- Pull It Together** How do these documents illustrate the difficulty of striking a proper balance between national security and individual rights?



GOVERNMENT ONLINE

Documents

To find additional primary sources on the Patriot Act, visit PearsonSuccessNet.com

DOCUMENT-BASED ASSESSMENT

- D
- access your medical records, tax records, information about the books you buy or borrow without probable cause, and the power to break into your home and conduct secret searches without telling you for weeks, months, or indefinitely
- It says that delayed notification search warrants have long existed and been upheld by courts in other criminal cases.
- The Patriot Act has broken civil liberties (the home furnishings) in its attempt to strike at terrorists (the wasp).
- Students should summarize excerpts from the documents in their responses.

L2 Differentiate Students use all the documents on the page to support their thesis.

L3 Differentiate Students include additional information available online at PearsonSuccessNet.com.

L4 Differentiate Students use materials from the textbook, the online information at [PearsonSuccess](http://PearsonSuccessNet.com) [Net.com](http://PearsonSuccessNet.com), and do additional research to support their views.



Go Online to PearsonSuccessNet.com for a student rubric and extra documents.

- Students should scan the chapter for Court cases that guaranteed the rights of privacy, security, and/or personal freedom related to a home, a vehicle, a computer and/or phone, and their person. For example, officers need a warrant before searching a home. A phone cannot be tapped or bugged without a warrant as well. Vehicles may be stopped and searched without a warrant but with probable cause. A suspect must be told of the charges against him or her, and is guaranteed the right against self-incrimination.

Introduce the Chapter

Essential Questions:

UNIT 5

What should be the role of the judicial branch?

CHAPTER 21

Why are there ongoing struggles for civil rights?

ACTIVATE PRIOR KNOWLEDGE

Have students examine the image and quotation on these pages. Point out that Amendments 13, 14, and 15 ended slavery and extended the rights of citizenship to African Americans. Ask: **Why was the civil rights movement necessary?** (*because discriminatory laws and practices still existed in society, which worked to deny equal rights; for example, poll taxes and intimidation limited the ability of African Americans to vote, and segregation in schools denied them equal access to education*) Then tell students to begin to further explore civil rights by completing the Chapter 21 Essential Question Warmup activity in their **Essential Questions Journal**. Discuss their responses as a class.

BEFORE READING

L2 ELL Differentiate Chapter 21 Prereading and Vocabulary Worksheet (Unit 5 All-in-One, p. 192)

SUCCESSNET STUDENT AND TEACHER CENTER

Visit **PearsonSuccessNet.com** for downloadable resources that allow students and teachers to connect with government “on the go.”

DIGITAL LESSON PRESENTATION

The digital lesson presentation supports the print lesson with activities and summaries of key concepts.

SKILLS DEVELOPMENT

ANALYZE IMAGES

You may wish to teach analyzing images as a distinct skill within Section 3 of this chapter. Use the Chapter 21 Skills Worksheet (Unit 5 All-in-One, p. 217) to help students learn how to analyze images. The worksheet asks students to study two photographs and analyze them in terms of content, emotions, context, and purpose. For L2 and L1 students, assign the adapted Skill Activity (Unit 5 All-in-One, p. 218).



The Chapter WebQuest challenges students to answer the chapter Essential Question by asking them about civil rights.



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Block Scheduling

BLOCK 1: Teach Section 1 lesson, including Transparencies 21A and 21B, Core Worksheet 21.1, and the Assess activity. Begin Section 2, including Bellringer and Compare/Apply Rational Basis/Strict Scrutiny activities. Discuss Transparency 21C and assign Create a Timeline of Civil Rights.

BLOCK 2: Have students complete Core Worksheet 21.2 and Extend Worksheet. Begin Section 3; discuss Bellringer and Relate Actions to Legislation. Allow time for groups to complete Core Worksheet 21.3. Organize groups for Debate Affirmative Action.

BLOCK 3: Have groups debate. Introduce Section 4 with Transparency 21F and Analyze Line Graph. Distribute Core Worksheet 21.4A; have students take the citizenship test. Assign Understand Immigration Arguments and Core Worksheet 21.4B. End the lesson with Strategies for Remediation.

CHAPTER 21

Civil Rights: Equal Justice Under Law

Essential Question

Why are there ongoing struggles for civil rights?

Section 1:

Diversity and Discrimination

Section 2:

Equality Before the Law

Section 3:

Federal Civil Rights Laws

Section 4:

American Citizenship

“Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful.”

—Justice John Marshall Harlan, dissenting in *Plessy v. Ferguson*, 1896

Photo: March on Washington, August 28, 1963



GOVERNMENT ONLINE

On the Go

To study anywhere, anytime, download these online resources at PearsonSuccessNet.com

- Political Dictionary
- Audio Review
- Downloadable Interactivities

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Lesson Goals

SECTION 1

Students will . . .

- identify ways that increasing diversity is changing American society by analyzing data on the ethnic composition of the United States.
- summarize the history of race- and gender-based discrimination in the United States by completing a chart on events and laws or policies that affected minority groups and women.

SECTION 2

Students will . . .

- understand how the Supreme Court interprets “equal protection of the laws” by analyzing and applying the tests it uses to decide cases.
- trace the history of segregation in public schools by creating a timeline of cases related to school integration.
- examine changing attitudes about school integration by evaluating a political cartoon on this topic.

SECTION 3

Students will . . .

- trace the development of civil rights legislation by relating it to historical actions of States designed to nullify African Americans’ rights.
- analyze the policy of affirmative action and why it is controversial by studying political cartoons and by exploring the issues surrounding it.

SECTION 4

Students will . . .

- summarize ways that individuals become citizens in the United States.
- analyze the controversy over immigration in the United States by preparing arguments for and against opinions on the topic.

DIFFERENTIATED INSTRUCTION KEY

Look for these symbols to help you adjust steps in each lesson to meet your students’ needs.

L1 Special Needs

L2 Basic

ELL English Language Learners

LPR Less Proficient Readers

L3 All Students

L4 Advanced Students

Pressed for Time

Have students prepare a handbook that recent immigrants could use to help them prepare for American citizenship. Students should include a historical perspective of civil rights legislation that applies to new citizens. Encourage students to illustrate their handbooks and provide the names and phone numbers of important local government resources. Handbooks should also include a citizenship study guide and test.

GUIDING QUESTION

How have various minority groups in American society been discriminated against?

African Americans	Native Americans	Hispanic Americans	Asian Americans
<ul style="list-style-type: none">• Slavery• Civil rights gains• Discrimination ongoing	<ul style="list-style-type: none">• Disease decimated population• Driven from lands• Forced relocation to reservations• Poverty, joblessness, alcoholism	<ul style="list-style-type: none">• Largest minority in U.S.• Mexican Americans in Southwest• Puerto Ricans in Northeast• Cuban Americans in South Florida	<ul style="list-style-type: none">• Resentment of Chinese workers led to violence• Chinese Exclusion Act• Japanese relocation camps during World War II

Get Started

LESSON GOALS

- Students will . . .
- identify ways that increasing diversity is changing American society by analyzing data on the ethnic composition of the United States.
 - summarize the history of race- and gender-based discrimination in the United States by completing a chart on events and laws or policies that affected minority groups and women.

SKILLS DEVELOPMENT

ANALYZE GRAPHIC DATA

Since there are several instances of graph use in this section, have students read about analyzing graphic data in the Skills Handbook, p. S26.

SECTION 1

Diversity and Discrimination



Guiding Question
How have various minority groups in American society been discriminated against? Use a table like the one below to take notes on the section.

African Americans	Native Americans	Hispanic Americans	Asian Americans
•	•	•	•
•	•	•	•
•	•	•	•

Political Dictionary
• heterogeneous • refugee
• immigrant • assimilation
• reservation

- Objectives**
1. Understand what it means to live in a heterogeneous society.
 2. Summarize the history of race-based discrimination in the United States.
 3. Examine discrimination against women in the past and present.

Image Above: The United States takes pride in its diversity.

Have you read George Orwell’s classic, *Animal Farm*? Even if you have not, you may have heard its most oft-quoted line: “All animals are created equal, but some animals are more equal than others.” You might keep Orwell’s comment in mind as you read this chapter.

A Heterogeneous Society

The term **heterogeneous** is a compound of two Greek words: *hetero*, meaning “other or different,” and *genos*, meaning “race, family, or kind.” Something that is heterogeneous is composed of dissimilar parts, made up of elements that are unrelated to or unlike one another—in short, something composed of a mix of ingredients. “We the People of the United States” are a heterogeneous lot, and we are becoming more so, year to year.

The population of the United States is predominantly white. It is today and, as you can see in the circle graph on page 614, it has been historically. The first census in 1790 reported that there were 3,929,214 people living in this country. More than four out of five were white. African Americans made up the remaining 19 percent of the population counted in that census. As the nation’s population grew over the decades, so, too, did the proportion of the American people who were white—until recently.

Today, the ethnic composition of the population is strikingly different from what it was only a generation ago. **Immigrants**—those aliens legally admitted as permanent residents—have arrived in near-record numbers every year since the mid-1960s. Over that period, the nation’s African American, Hispanic American, and Asian American populations have grown at rates several times that of the white population. Indeed, the minority population now exceeds the white population in four States: California, Hawaii, New Mexico, and Texas.

A look at gender balance in the population reveals that females are more numerous than males. This has been the case for more than half a century.

As a result of these changes in the American population, the United States is more heterogeneous today than ever before. That fact is certain to have a profound effect on the American social, political, and economic landscape on through the twenty-first century.

Focus on the Basics

- FACTS:** • The United States is a diverse nation made up of people from many different backgrounds. • African Americans, Native Americans, Hispanic Americans, Asian Americans, and other minority groups have suffered from discrimination. • Women of all backgrounds have experienced gender discrimination, especially in wages.
- CONCEPTS:** equal protection
- ENDURING UNDERSTANDINGS:** • The Declaration of Independence declares that “all men are created equal,” but our nation still struggles to meet the ideal of equality for all. • Race-based and gender-based discrimination has declined but not disappeared in this country.

Race-Based Discrimination

White Americans have been historically reluctant to yield to nonwhite Americans a full and equal place in the social, economic, and political life of this nation. Over time, the principal targets of that ethnic prejudice have been African Americans, Native Americans, Asian Americans, and Hispanic Americans. The white-male-dominated power structure has also been slow to recognize the claims of women to an equal place in American society.

African Americans Much of what you will read in these pages focuses on discrimination against African Americans. There are three principal reasons for this focus. First, African Americans have been the victims of consistent and deliberate unjust treatment for a longer time than any other minority group of Americans.¹ The ancestors of most African Americans came to this country in chains. Over a period of some two hundred years, tens of thousands of Africans were kidnapped, crammed aboard sailing ships, brought to America, and then sold in slave markets. As slaves, they were the legal property of other human beings. They could be bought and sold and forced to do their owners' bidding, however harsh the circumstances.

It took a civil war to end more than two centuries of slavery in this country. The 13th Amendment finally abolished slavery in 1865. Still, the Civil War and the ratification of that amendment did not end widespread racial discrimination in the United States.

Second, African Americans constitute a huge minority group in the United States. They number well over 40 million today, over 13 percent of all of the American people.

Finally, most of the gains the nation has made in translating the Constitution's guarantees of equality into a reality for all persons have come out of efforts made by and on behalf of African Americans. Recall that, for example, the struggles of Martin Luther King, Jr., and others resulted in the Civil Rights Act of 1964 and then the Voting Rights Act of 1965. See Chapter 6, Section 3.

¹ Slavery first came to what was to become the United States in 1619; in August of that year, 20 Africans were sold to white settlers at Jamestown in colonial Virginia.

America is now an inescapably multi-racial society. Still, unlike whites, African Americans live with the consequences of America's history of racial discrimination every day of their lives. Of course, this is not to say that other groups of Americans have not also suffered the effects of discrimination. Clearly, many have.

Native Americans White settlers first began to arrive in America in relatively large numbers in the mid-1600s. At the time, some one million Native Americans were living in territory that was to become the United States.² By 1900, however, their number had fallen to less than 250,000.

Diseases brought by white settlers decimated those first Americans. So, too, did the succession of military campaigns that accompanied the westward expansion of the United States. To quote one leading commentator:

"The only good Indian is a dead Indian" is not simply a hackneyed expression from cowboy movies. It was part of the strategy of westward expansion, as settlers and U.S. troops mercilessly drove the eastern Indians from their ancestral lands to the Great Plains and then took those lands too."

—Thomas E. Patterson,
The American Democracy

Today, about 3 million Native Americans live in this country. More than a third of them live on or near **reservations**, which are public lands set aside by government for use by Native American tribes.

² An estimated 8 to 10 million Native Americans lived in all of North and South America in the mid-1600s.



Checkpoint
What was the impact of the 13th Amendment on racial discrimination?

Native Americans comprise a large number of ethnic groups and distinct tribes, representing a diversity of nations and lifestyles. ▼

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 196) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 197)

BELLRINGER

Write on the board: **How has cultural diversity in the United States affected the foods you eat? Sports you play or watch? Holidays you celebrate? List examples in your notebook.**

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

DISCUSS BELLRINGER RESPONSES

Have students share their answers to the Bellringer questions. Point out that the United States is among the most heterogeneous societies in the world. Ask students to guess other heterogeneous countries. (*Canada, for example, has more than 200 ethnic groups. Nigeria is made up of more than 250 ethnic groups.*) Have students name countries with homogeneous societies. (*Han Chinese make up 92 percent of China's population. Egypt is 98 percent Egyptian.*)

L2 ELL Differentiate Have students look up the meaning of the words *hetero-* (other, different), *homo-* (same, like), and *-genos* (race, family, kind) in the dictionary. Ask non-native students to discuss how heterogeneous their home country is compared to the United States.

DISCUSS DIVERSITY

Display Transparency 21 A, Cultural Diversity, which shows the ethnic composition of the United States. Ask: **What two ethnic groups were counted in the 1790 census?** (*White and African American*) **What is the fastest growing minority group?** (*Hispanic Americans*) Ask volunteers among your minority students to discuss diversity within their group. For example, what countries of origins are represented among your Asian students? Do individuals consider themselves "Chicano," "Latino," or some other designation? Is the diversity within these groups reflected in different forms of dress, foods, or customs? Be mindful of students' privacy by respecting their decision not to participate. If your class contains no minority students, lead a general class discussion on diversity within minority groups.

Answers

Checkpoint It had no effect on racial discrimination.

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 21, Section 1:

- L2** Prereading and Vocabulary Worksheet (p. 192)
- L3** Reading Comprehension Worksheet (p. 196)
- L2** Reading Comprehension Worksheet (p. 197)
- L3** Core Worksheet (p. 198)
- L3** Quiz A (p. 199)
- L2** Quiz B (p. 200)

IDENTIFY BENEFITS/CHALLENGES OF DIVERSITY

Ask: **In what ways might diversity change U.S. politics?** (may lead to varied voting blocs and more diverse groups of candidates and elected officials)

What challenges might growing diversity create?

(possible answers: increased misunderstanding or conflict among people whose social, cultural, and religious beliefs differ; resentment from whites who feel their dominant position threatened) **Is increasing diversity likely to make Americans more or less tolerant? Explain.** (Some may say that having more frequent contact with diverse peoples will increase tolerance; others might argue that greater diversity will cause intolerance or bigotry by introducing people to beliefs or practices that they disagree with or find threatening.)

PREDICT ASSIMILATION PATTERNS

Review the definitions of *discrimination* (prejudice against) and *assimilation* (merge into). Point out that in the early 1900s, Americans often referred to the nation as a “melting pot,” in which immigrants worked hard to assimilate. Today the United States with its many distinctive racial and ethnic groups is instead compared to a “salad bowl” or “marble cake,” in which each of the ingredients retains its separate color, texture, and flavor within the “whole.” Have students write a paragraph answering this question and giving reasons for their opinion: **What will American culture resemble by 2050?**

INTRODUCE THE TOPIC OF DISCRIMINATION

Display Transparency 21B, Preventing Discrimination. Then ask: **What are some situations in which withholding information about a person’s age, gender, and race is appropriate?** (applications for jobs, school, or housing) **What are some situations in which providing this information may be appropriate? Why?** (applying for certain vocational or educational scholarships or medical benefits set aside for particular races or ages; or for certain athletic competitions in which men and women compete separately or in age categories)

Explain that diversity is reflected not only in age, gender, ethnicity, and race, but also in religious beliefs and practices, languages spoken, country of origin, income, marital status, and education. Have students describe situations in which a group might face discrimination based on any of these characteristics. As each is described, have students suggest laws, rules, or procedures that act as protections against discrimination.

Answers

Analyzing Graphs Native Americans, Asians, and any other races that were not White or African American; 15.5 percent



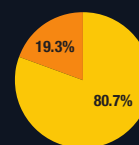
Diversity in the United States

The U.S. Census Bureau divides the American population into groups based on race and Hispanic origin. **Which of these groups were not counted in the 1790 census? What percentage of the population today has Hispanic origins?**

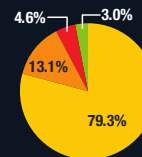


Population by Race and Hispanic Origin

1790



2010*



Hispanic (of any race)
15.5%
of total population

Like African Americans, Native Americans have been the victims of overwhelming discrimination. The consequences of that bias have been appalling, and they remain evident today. Poverty, joblessness, and alcoholism plague many reservations. The Indian Education Act of 1972 attempted to remedy the cycle of continual poverty by providing financial assistance to local educational agencies for Native American children and adult programs. Still, the life expectancy of Native Americans living on reservations today is ten years less than the national average, and the Native American infant mortality rate is one and a half times that of white Americans.

Hispanic Americans Hispanic Americans are those in this country who have a Spanish-speaking background; many prefer to be called Latinos. Hispanics may be of any race. According to the Bilateral Commission on the Future of United States–Mexican Relations, Hispanic Americans “are among the world’s most complex groupings of human beings. [The largest number] are white, millions . . . are mestizo,

nearly half a million in the United States are black or mulatto.”³

Today, Hispanic Americans number some 45 million and they constitute the largest minority group in the United States, having surpassed African Americans around the year 2000. They are also the nation’s fastest-growing population group. Hispanic Americans can generally be divided into four main subgroups:

1. Mexican Americans More than half of all Hispanics in the U.S., at least 29 million persons, were either born in Mexico or trace their ancestry there. Those born in this country of Mexican parents are often called Chicanos.

Most of the Mexican American population lives in the States of California, Arizona, New Mexico, and Texas, but that population is spreading throughout much of the country. A majority of the residents of such large cities as El Paso and San Antonio in Texas are

³ A mestizo is a person with both Spanish or Portuguese and Native American ancestry. A mulatto is a person of African and white ancestry.

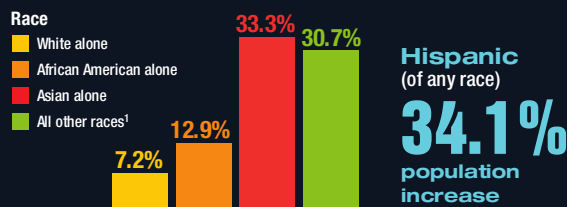
Background

INDIAN EDUCATION ACT The Department of Education recognized that Native Americans had unique educational, linguistic, and cultural academic needs. Thus, the Indian Education Act of 1972 “provides federal assistance in education . . . to help close the gap which now exists between Indian education and the general educational level of the United States. The Act further creates a new Office of Indian Education within the Office of Education. . . . The new Act created the National Advisory Council for Indian Education to provide policy direction and guidance to the Congress and those responsible for implementing the Act. The Council is comprised of 15 Indian or Alaskan Natives appointed by the President from a select list recommended by Indian tribes and organizations throughout the Country.” (*Journal of American Indian Education*: Volume 14, Number 2)



Population Increase, 2000–2010*

Although the population of the United States remains predominantly white, minority populations are growing at a faster rate than the majority population. *What is the rate of growth for Asian Americans? What are the benefits of diversity in a community?*



For both charts:
 *Projected
¹Includes American Indian and Alaska Native alone, Native Hawaiian and Other Pacific Islander alone, and Two or More Races. SOURCE: U.S. Census Bureau

Hispanic today, and such smaller border cities as Laredo and Brownsville in Texas are now over 90 percent Latino.

2. Puerto Ricans Another large group of Hispanics has come to the mainland from the island of Puerto Rico. The population of the United States now includes about four million Puerto Ricans. Most of them have settled in New York and New Jersey, and in other parts of the Northeast.

3. Cuban Americans The Hispanic population also includes some 1.5 million Cuban Americans. They are mostly people who fled the Castro dictatorship in Cuba, and their descendants. A majority of them have settled in Miami and elsewhere in South Florida.

4. Central and South Americans The fourth major subgroup of Hispanic Americans came here from Central and South America, many as refugees. A **refugee** is one who seeks protection (refuge) from war, persecution, or some other danger. More than three million persons have emigrated to the United States from Central and South American countries

over the past 30 years or so; they have arrived in the largest numbers from Nicaragua, El Salvador, Guatemala, Colombia, and Chile. Many have also come from the Dominican Republic, an island nation in the Caribbean.

Asian Americans The story of white America's mistreatment of Asians is a lengthy one, too. Asians have faced discrimination from the first day they arrived. As with all immigrant groups, assimilation into the white-dominated population has been difficult. **Assimilation** is the process by which people of one culture merge into and become part of another.

Chinese laborers were the first Asians to come to the United States in large numbers. They were brought here in the 1850s to 1860s as contract laborers to work in the mines and to build railroads in the West. Many white Americans, both native-born and immigrants, resented the competition of what they called "coolie labor." Their resentments were frequently expressed in acts of violence toward Asians.

Congress brought Chinese immigration to a near halt with the Chinese Exclusion



Tell students to go to the Audio Tour for data on the ethnic composition of the U.S. population and the rate of growth of ethnic populations.

DISTRIBUTE CORE WORKSHEET

Organize students into small groups and distribute the Chapter 21 Section 1 Core Worksheet (Unit 5 All-in-One, p. 198), which asks students to identify historical events and laws that perpetuated or removed discrimination against minority groups in the United States. Ask students to complete the chart based on information in the text and then to answer the Reflection Questions. Point out that the impact of discrimination on each of these groups has varied over time, increasing or decreasing based in part upon historical events as well as government policies. Discuss students' responses to the Reflection Questions, particularly number 3, which focuses on what should be the judiciary's role in battling discrimination.

L2 Differentiate Fill in the first row of the chart for students, ask a volunteer to fill in the second row, and then have students work independently or in pairs to complete the remainder of the chart.

Name _____ Class _____ Date _____

CHAPTER 21 **CORE WORKSHEET**
SECTION 1 **Diversity and Discrimination** **3**

Use information in your textbook to complete the chart below. Then answer the questions that follow.

Minority Group	Historical Event(s) that Influenced Treatment	Government Policies or Laws that Resulted from Historical Events	Effects of Government Policies
African Americans			
Native Americans			
Hispanic Americans			
Asian Americans			

1. Based on this chart, how responsive would you say Congress has been in dealing with discrimination?

2. Why do you think the heterogeneous makeup of the American population will have an important effect on American society, politics, and economics in the years to come?

3. What do you think should be the role of the judiciary in responding to the types of discrimination described in the chart?

4. What does the passage of civil rights and voting rights laws suggest about how public attitudes about discrimination against African Americans have changed over time?

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Background

CHINESE EXCLUSION ACT The Chinese Exclusion Act of 1882 barred Chinese immigrants because "in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities...." Events leading to this discriminatory law began in the mid-1800s when the California Gold Rush drew waves of Chinese immigrants hoping to work in the mines. Many new arrivals found jobs building railroads. In 1870, Chinese laborers agreed to work on the Union Pacific in Wyoming for \$32.50 per month. White workers earned \$52 per month for the same job. White workers resented the competition for jobs and blamed the Chinese for depressing wages. Many Americans also believed that the physical and cultural differences of Asians made assimilation impossible. After the act passed, violence against Chinese people in the United States increased.

Answers

Analyzing Graphs 33.3 percent; possible benefits of diversity: more opportunity for social and cultural exchange and expression; multiple perspectives and skill sets to contribute to business and society; greater variety in music, dance, theater, architectural styles, cuisine, fashion

Checkpoint a person who seeks protection in a new country from war, persecution, or some other danger in the home country

EXTEND THE LESSON

L3 Differentiate Have students research the immigration of refugees from a particular country or countries. Ask them to prepare a report that identifies the country or countries the immigrants came from, why they left their home country, the obstacles they faced in getting out of the country of origin or into the United States, how they obtained refugee status in the United States, and, if known, where large numbers of this group have settled in the United States.

Assess and Remediate

L2 Have students create a timeline showing the history of discrimination against minority groups and women in the United States.

L3 Collect the Core Worksheets and assess the students' work.

L3 Assign the Section 1 Assessment questions.

L3 Section Quiz A (Unit 5 All-in-One, p. 199)

L2 Section Quiz B (Unit 5 All-in-One, p. 200)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

Government online

All print resources are available on the Teacher's Resource Library CD-ROM and online at PearsonSuccessNet.com.

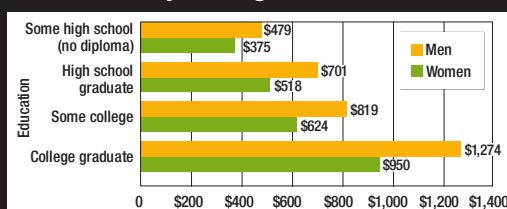
Gender Discrimination

Disparity in Pay

Studies show that women earn less than 80 cents for every dollar earned by men. **What do the cartoon and graph say about equality in the workplace?**



Median Weekly Earnings of Men and Women*



* Data presented for median usual weekly earnings of full-time wage and salary workers, age 25 and over, 2008 first quarter
SOURCE: Bureau of Labor Statistics

virulent
adj. bitterly
antagonistic, spiteful

Act of 1882. Because of this and other government actions, only a very small number of Chinese, Japanese, and other Asians were permitted to enter the United States for more than 80 years.

Early in World War II, the Federal Government ordered the evacuation of all persons of Japanese descent from the Pacific Coast. Some 120,000 people, two thirds of them native-born American citizens, were forcibly removed to inland "war relocation camps." Years later, the government conceded that this action had been both unnecessary and unjust.

Congress made dramatic changes in American immigration policies in 1965. Since then, some ten million Asian immigrants have come to this country, mostly from the Philippines, China, Korea, Vietnam, and India. The term "Asian American" encompasses an ever more diverse population. Asian Americans represent a tremendous variety of languages, religions, and cultures, and many recent immigrants from Asia have little in common with one another.

Today, the Asian American population exceeds 15 million. Asian Americans now live in every part of the United States. They constitute some 40 percent of the population in Hawaii and more than 10 percent of the population in California. New York City boasts the largest Chinese community outside Asia.

Discrimination Against Women

Unlike the several ethnic groups described thus far, women are not a minority in the United States. They are, in fact, a majority group. Still, traditionally in American law and public policy, women have not enjoyed the same rights as men. Their status was even lower, in many instances, than men who were themselves the target of **virulent** discrimination. Women have been treated as less than equal in a great many matters—including, for example, property rights, education, and employment opportunities.

Organized efforts to improve the place of women in American society date from July 19, 1848. On that day, a convention on women's rights met in Seneca Falls, New York, and adopted a set of resolutions that deliberately echoed the words of the Declaration of Independence. It began:

PRIMARY SOURCE

When, in the course of human events, it becomes necessary for one portion of the family of man to assume among the people of the earth a position different from that which they have hitherto occupied, . . . We hold these truths to be self-evident: that all men and women are created equal . . .

—Declaration of Sentiments, 1848

Background

ANTISLAVERY AND WOMEN'S RIGHTS The antislavery movement spurred the women's rights movement, as many abolitionists were women. At the second women's rights convention, which was held in 1850 at Salem, Ohio, speaker J. Elizabeth Jones noted: "It is not Woman's *Rights* of which I design to speak, but of Woman's *Wrongs*. I shall claim nothing for ourselves because of our sex—I shall demand the recognition of no rights on the ground of our womanhood. In the contest which is now being waged in behalf of the enslaved colored man in this land, I have yet to hear the first word in favor of his rights as a colored man; the great point which is sought to be established is this, that the colored man is a human being, and as such, entitled to the free exercise of all the rights which belong to humanity. And we should demand our recognition as equal members of the human family. . . ."

Answers

Analyzing Graphs Sample answer: Women have not yet achieved equality in the workforce based on pay.

Those who fought and finally won the long struggle for women's suffrage believed that, with the vote, women would soon achieve other basic rights. That assumption proved to be false. Although more than 51 percent of the population is now female, women have held only a minor fraction of the nation's top public offices since 1789.

Even today, women hold little more than 15 percent of the 535 seats in Congress and a little less than 25 percent of the 7,382 seats in the 50 State legislatures. Less than one sixth of the 50 State governors today are female. Women are also hugely underrepresented at the upper levels of corporate management and other power groups in the private sector. Fewer than 20 percent of the nation's doctors, lawyers, and college professors are women.

It is illegal to pay women less than men for the same work. The Equal Pay Act of 1963 requires employers to pay men and women the same wages if they perform the same jobs in the same establishment under the same working conditions. The Civil Rights Act of 1964 also prohibits job discrimination based on sex. Yet, more than 45 years after Congress passed those laws, working women earn, on the average, less than 80 cents for every dollar earned by working men. See the cartoon and graph on page 616.

Women earn less than men for a number of reasons—including the fact that the male

workforce is, overall, better educated and has more job experience than the female workforce. (Note that these factors themselves can often be traced to discrimination.) In addition, some blame the so-called "Mommy track," in which women put their careers on hold to have children or work reduced hours to juggle child-care responsibilities. Others claim that a "glass ceiling" of discrimination in the corporate world and elsewhere, invisible but impenetrable, prevents women from rising to their full potential.

Certainly it is true that until quite recently women were limited to a fairly narrow range of jobs. In many cases, women were encouraged not to work outside the home once they were married. Even now, many jobs held by women are in low-paying clerical and service occupations. The Bureau of Labor Statistics reports that 97 percent of all secretaries today are women; so too are 95 percent of all child-care workers, 92 percent of all registered nurses, 92 percent of all bookkeepers and auditing clerks, 92 percent of all hairdressers and cosmetologists, and 89 percent of all dieticians and nutritionists.

Efforts on behalf of equal rights for women have gained significant ground in recent years. But, recall, that ground has not included an Equal Rights Amendment to the Constitution.

Checkpoint
What was the significance of the Declaration of Sentiments?

REMEDATION

If Your Students Have Trouble With	Strategies For Remediation
Diversity and the ethnic composition of the United States (Questions 1, 2, 4, 6)	Have students describe in a journal entry how they think the increasing heterogeneous nature of American society will affect the social, political, or economic life of the United States.
History of discrimination against minority groups (Questions 1, 3, 5, 7)	Ask students to write a true or false quiz with ten questions concerning discrimination of minority groups and women. Have students exchange and complete one another's quizzes.

SECTION 1 ASSESSMENT

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

1. **Guiding Question** Use your completed graphic organizer to answer this question: How have various minority groups in American society been discriminated against?
5. (a) Identify and describe two laws intended to improve women's wages. (b) Summarize three reasons why women still earn less than men.

Key Terms and Comprehension

2. Who are **immigrants**?
3. What event and which amendment ended slavery in the United States?
4. How are **refugees** similar to and different from other **immigrants**?

Critical Thinking

6. **Predict Consequences** (a) What is assimilation? (b) What could be the consequences of assimilation on a minority group?
7. **Express Problems Clearly** (a) What problems have Native Americans faced? (b) Does the Federal Government have a responsibility to remedy this situation? Why or why not?

Quick Write

Problem-Solution Essay: Identify a Problem Scan the chapter for a challenge that immigrants, minority Americans, or women face. Write a summary paragraph or two that includes a statement of the problem or challenge and an explanation of why and for whom it is a problem. Look at society as a whole as you consider the matter.

Assessment Answers

1. African American slavery and ongoing discrimination; Native Americans driven from lands by settlers and military and moved to reservations; violence against Chinese immigrant workers in mid-1800s; Chinese Exclusion Act stopped almost all Chinese immigration; Japanese relocation camps during World War II
2. aliens legally admitted as permanent residents
3. Civil War and 13th Amendment
4. **refugees**: forced to leave home country

because of war, persecution, or other danger; **immigrants**: leave home country, but do so voluntarily without seeking refuge

5. (a) **Equal Pay Act of 1963**: employers must pay men and women the same wages if they perform the same jobs in the same establishment under the same working conditions; **Civil Rights Act of 1964**: prohibits job discrimination based on sex (b) Male workforce is, overall, better educated with more experience; women put careers on hold to raise children; "glass ceiling" prevents women from rising to full potential.

Answers

Checkpoint It was a set of resolutions at the first organized effort to improve the place of women in American society.

6. (a) process by which people of one culture merge into and become part of another culture (b) may lose cultural history, identity, and values
7. (a) poverty, joblessness, alcoholism, lower life expectancy, higher infant mortality (b) Answers will vary.

QUICK WRITE Remind students to consider the cascading effects on society, such as intolerance or fear, associated with the problem or challenge they identify.

GUIDING QUESTION

How has the interpretation of the guarantee of equal rights changed over time?

Equal Protection Clause:
14th Amendment; no State shall deny to any person the equal protection of the laws

Reasonable Classification:
government may classify, but not unreasonably

Rational Basis Test
classification must be reasonably related to achieving proper government purpose

Strict Scrutiny Test:
in equal protection cases involving fundamental rights or suspect classifications, a "compelling government interest" must justify class distinctions

Separate-but-Equal Doctrine:
ruling in *Plessy v. Ferguson* that segregation does not violate equal protection if the separate facilities are equal

De Jure, De Facto Segregation:
de jure: segregation authorized by law; de facto: segregation that exists in fact, even if no law requires it

Get Started

LESSON GOALS

- Students will . . .
- understand how the Supreme Court interprets "equal protection of the laws" by analyzing and applying the tests it uses to decide cases.
 - trace the history of segregation in public schools by creating a timeline of cases related to school integration.
 - examine changing attitudes about school integration by evaluating a political cartoon on this topic.

SKILLS DEVELOPMENT

ANALYZE TIMELINES

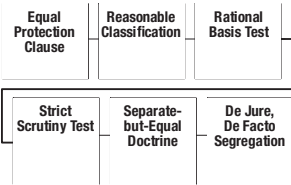
Before students create a timeline of civil rights in this section, you may want to review information on analyzing timelines in the Skills Handbook, p. S29.

SECTION 2

Equality Before the Law



Guiding Question
How has the interpretation of the guarantee of equal rights changed over time? Use a flowchart like the one below to take notes on the section.



- Political Dictionary**
- rational basis test
 - strict scrutiny test
 - segregation
 - Jim Crow
 - separate-but-equal doctrine
 - integration
 - de jure
 - de facto

- Objectives**
1. Explain the importance of the Equal Protection Clause.
 2. Describe the history of segregation in America.
 3. Examine how classification by gender relates to discrimination.

Image Above: The statue *Freedom*, atop the nation's Capitol

The huge bronze statue of *Freedom* has stood atop the nation's Capitol in Washington, D.C., for about 150 years now. That bold figure is meant to symbolize the basic ideas upon which the United States exists—the concepts of individual liberty, of self-government, and of equal rights for all.

The irony is that records recently unearthed by the Architect of the Capitol show that at least 400 slaves worked on the construction of the Capitol from 1792 to its opening in 1800. And that those slaves cast the huge sculpture of *Freedom*, and even hoisted it atop the new building. Those old documents also record payments to several local slave owners—for example, "To Joseph Forest, for the hire of the Negro Charles." The owners were paid \$5 a month for each slave who worked on the project.

Equal Protection Clause

The equality of all persons, proclaimed so boldly in the Declaration of Independence, is not set out in so many words in the Constitution. Still, that concept pervades the document.

The closest approach to a literal statement of equality is found in the 14th Amendment's Equal Protection Clause. It declares that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Those words, added to the Constitution in 1868, were originally meant to benefit newly freed slaves. Over time, they have come to mean that the States (and their local governments) cannot draw unreasonable distinctions between any classes of persons. The Supreme Court has often held that the 5th Amendment's Due Process Clause puts the same restriction on the Federal Government.

Reasonable Classification Government must have the power to classify, to draw distinctions between persons and groups. Otherwise, it could not possibly regulate human behavior. That is to say, government must be able to *discriminate*—and it does. For example, those who rob banks fall into a special class, and they receive special treatment by government. Clearly, that sort of discrimination is reasonable.

Focus on the Basics

- FACTS:**
- The 14th Amendment guaranteed "equal protection of the laws" to all Americans in 1868, yet many States adopted laws allowing race- and gender-based discrimination.
 - The Supreme Court established the separate-but-equal doctrine in *Plessy v. Ferguson*, but then reversed it in *Brown v. Board of Education*.
 - Since 1971, most laws that treat women differently from men have been successfully challenged in the courts.
- CONCEPTS:** individual rights and responsibilities, equal protection
- ENDURING UNDERSTANDINGS:**
- The Constitution describes the equality of all persons in general terms, but the concept pervades the document.
 - The nation has not yet achieved complete integration of educational systems, but legally enforced racial segregation in public life has been eliminated.

Government may not discriminate *unreasonably*, however. Every State taxes the sale of cigarettes, and so taxes smokers but not non-smokers. No State can tax only blonde smokers, however, or only male smokers.

Over time, the Supreme Court has rejected many equal protection challenges to a wide variety of actions by government. More often than not, however, the Supreme Court has found that what those governments have done is, in fact, constitutional.

The Rational Basis Test The Supreme Court most often decides equal protection cases by applying a standard known as the **rational basis test**. This test asks: Does the classification in question bear a reasonable relationship to the achievement of some proper governmental purpose?

A California case, *Michael M. v. Superior Court*, 1981, illustrates that test. California law says that a man who has sexual relations with a girl under 18 to whom he is not married can be prosecuted for statutory rape. However, the girl cannot be charged with that crime, even if she is a willing partner. The Court found the law to bear a reasonable relationship to a proper public policy goal: preventing teenage pregnancies.

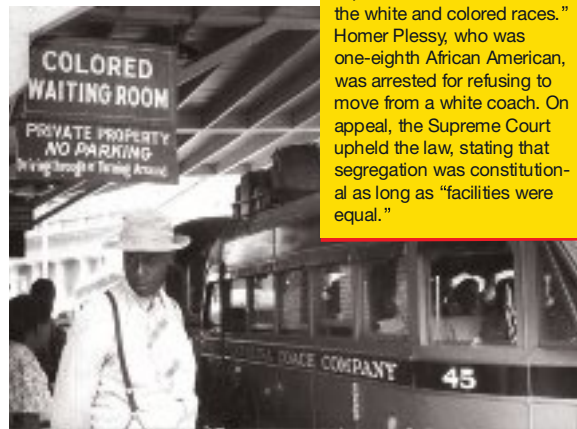
The Strict Scrutiny Test The Court imposes a higher standard in some equal protection cases, however. This is especially true when a case deals with (1) such “fundamental rights” as the right to vote, the right to travel between the States, or 1st Amendment rights; or (2) such “suspect classifications” as those based on race, sex, or national origin.

In these instances, the Court has said that a law must meet a higher standard than the rational basis test: the **strict scrutiny test**. A State must be able to show that some “compelling governmental interest” justifies the distinctions it has drawn between classes of people. Thus, in an alimony case, *Orr v. Orr*, 1979, an Alabama law that made women but not men eligible for alimony was held unconstitutional, as a denial of equal protection—because the law’s distinction between men and women did not serve any compelling governmental interest.

Segregation by Race

Beginning in the late 1800s, nearly half the States—including some outside the South—passed racial segregation laws. Used in this context, **segregation** refers to the separation of one group from another on the basis of race. Most of those statutes were **Jim Crow laws**—laws aimed at African Americans in particular. Some were also drawn to affect Mexican Americans, Asian Americans, and Native Americans. They regularly required segregation by race in the use of both public and private facilities: schools, parks and playgrounds, hotels and restaurants, streetcars and railroads, public drinking fountains, restrooms, and cemeteries. Many also prohibited interracial marriages.

The Separate-but-Equal Doctrine The Supreme Court provided a constitutional basis for Jim Crow laws by creating the **separate-but-equal doctrine** in 1896. In *Plessy v. Ferguson*, the Court upheld a Louisiana law that required segregation in railroad coaches. It ruled that the law did not violate the Equal Protection Clause because the *separate* seating provided for African Americans was *equal* to the seating provided for whites.



SUPREME COURT at a glance

- ▶ **Case:** *Plessy v. Ferguson*, 1896
- ▶ **Issues:** equal protection, constitutionality of segregation
- ▶ **Decision:** A Louisiana law stated that railway companies had to “provide equal but separate accommodations for the white and colored races.” Homer Plessy, who was one-eighth African American, was arrested for refusing to move from a white coach. On appeal, the Supreme Court upheld the law, stating that segregation was constitutional as long as “facilities were equal.”

Chapter 21 • Section 2 619

Checkpoint
What were Jim Crow laws?

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 201) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 203)

BELLRINGER

Write on the board: **“Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. . . . The humblest is the peer of the most powerful.”** —Justice John Marshall Harlan, dissenting in *Plessy v. Ferguson*, 1896

L2 ELL Differentiate Explain that one meaning of the word *peer* is “equal.”

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

DISCUSS THE BELLRINGER

Ask: **Why is the Constitution “color-blind”?** (*Its laws are to be applied equally, regardless of a person’s race or ethnicity.*) Have students paraphrase the second sentence. (*Poor people have the same rights as rich people.*)

COMPARE RATIONAL BASIS TO STRICT SCRUTINY

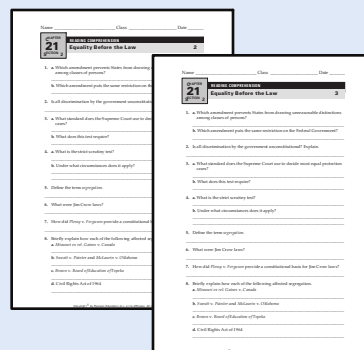
On the board, draw a T-chart like the one below. Have students compare and contrast the two tests the Supreme Court uses to decide whether a law is discriminatory toward one classification (group) or provides equal protection.

Rational Basis Test	Strict Scrutiny Test
<ul style="list-style-type: none"> • least strict or lowest level of scrutiny • Questions considered: Is there a good reason for this law? Does applying this law meet a legitimate or reasonable social or economic purpose that is a goal of government? • The Court rarely overturns legislation using the rational basis test. 	<ul style="list-style-type: none"> • most strict or highest level of scrutiny • Questions considered: Does the law infringe on a fundamental or basic constitutional right? Does the law or policy include a “suspect” or suspicious classification based on race, gender, or national origin? If so, the law is invalid unless the government can show it serves a compelling governmental interest, such as national security. • The Court often overturns laws using the strict scrutiny test.

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 21, Section 2:

- L3** Reading Comprehension Worksheet (p. 201)
- L2** Reading Comprehension Worksheet (p. 203)
- L3** Core Worksheet (p. 205)
- L3 L4** Extend Worksheet (p. 207)
- L3** Quiz A (p. 209)
- L2** Quiz B (p. 211)



Answers

Checkpoint laws that required segregation by race in public and private facilities

APPLY RATIONAL BASIS AND STRICT SCRUTINY

Read aloud the following laws or cases and ask students to determine which test the Court would use to analyze them under the Equal Protection Clause. Have students explain their answers.

1. **Seatbelts are mandatory.** (*rational basis; social goal of safety*)
2. **Japanese Americans must relocate to internment camps.** (*strict scrutiny; suspect classification discriminates against national origin and denies freedom of movement; ruling upheld based on national security*)
3. **Virginia law makes interracial marriages illegal.** (*strict scrutiny; suspect classification discriminates against race; law overturned*)
4. **The legal drinking age is changed to 21 years old.** (*rational basis; social goals of health and safety*)
5. **A State law excludes women from jury duty.** (*strict scrutiny; suspect classification discriminates against gender; law overturned because it served no compelling governmental interest*) NOTE: Explain to students that cases involving women's rights were analyzed under the rational basis test from 1789 to the 1970s. The Court followed social norms, which assumed it was rational to protect women and keep them in their "proper sphere."
6. **A white male fights affirmative action policies of law school registration.** (*strict scrutiny; suspect classification discriminates against race*)
7. **Law requires States to use social security numbers when administering welfare benefits.** (*rational basis; economic regulation*)
8. **U.S. Forest Service harvests timber in the National Forest, which disturbs Native American burial grounds.** (*rational basis; economic goal of utilizing federal lands; Court decided that the case did not interfere with fundamental religious rights of Native Americans and so did not warrant strict scrutiny.*)

L4 Differentiate Have students research *Korematsu v. United States* (case 2 above), one of the few cases in which the Court allowed a suspect classification to stand. Have students answer these questions: **What justification did the majority give for its decision to allow race-based classification? What was the suspect classification in this case? Do you think the action would pass the strict scrutiny test today? Why or why not?**

Answers

Checkpoint Schools had to desegregate.

The doctrine was soon extended to other fields. And it stood, largely unchallenged, for nearly 60 years.

Early Challenges The Supreme Court first began to chip away at the separate-but-equal doctrine in *Missouri ex rel. Gaines v. Canada* in 1938. Lloyd Gaines, an African American, was denied admission to the law school at the all-white University of Missouri. Gaines was fully qualified for admission—except for his race. The State did not have a separate law school for African Americans. However, it did offer to pay his tuition at a public law school in any of the four neighboring States, which did not discriminate by race. Gaines, however, insisted on a legal education in his home State.

The Court held that the separate-but-equal doctrine left Missouri with two choices: admit Gaines to the State's one law school or establish a separate-but-equal school for him. The State gave in. Gaines was admitted to the university's law school.

Over the next several years, the Court began to insist on equality of separate facilities. Thus, in 1950 the Court decided two major cases in line with its holding in Gaines: *Sweatt v. Painter* and *McLaurin v. Oklahoma*. Both cases involved African American university students for whom a State had provided separate educational facilities. The Court found that, in both instances, those separate facilities were, in fact, far from equal. Still, in neither of these cases did the Court reexamine the validity of the separate-but-equal doctrine.

Brown v. Board of Education Finally, in 1954, the Court reversed *Plessy v. Ferguson*. In *Brown v. Board of Education of Topeka*, it struck down the laws of four States requiring or allowing separate public schools for white and African American students.⁴

Unanimously, the Court held segregation by race in public education to be invalid:

⁴ Kansas, Delaware, South Carolina, and Virginia. On the same day, the High Court also struck down racially segregated public schools in the District of Columbia as a violation of the 5th Amendment, *Bolling v. Sharpe*, 1954.

“ PRIMARY SOURCE

Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

... To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. ... Separate educational facilities are inherently unequal.

—Chief Justice Earl Warren

In 1955 the Court directed the States to make “a prompt and reasonable start” to end segregation and to accomplish that goal “with all deliberate speed.”

A “reasonable start” was made in Baltimore, Louisville, St. Louis, and elsewhere. In most of the Deep South, however, “massive resistance” soon developed. State legislatures passed laws, and school boards worked to block **integration**—the process of desegregation, of bringing a previously segregated group into the mainstream of society. Most of those efforts were clearly unconstitutional, but challenging them in court proved both costly and slow.

The pace of desegregation quickened after Congress passed the Civil Rights Act of 1964. That act forbids the use of federal funds to aid any State or local activity in which racial segregation is practiced. It also directs the Justice Department to file suits to prompt desegregation actions.

The Supreme Court hastened the process in 1969. In a case from Mississippi, *Alexander v. Holmes County Board of Education*, it ruled that, after 15 years, the time for “all deliberate speed” had ended. Said a unanimous Court: “Continued operation of segregated schools under a standard allowing for ‘all deliberate speed’ . . . is no longer constitutionally permissible.”

Background

JIM CROW LAWS From the 1880s into the 1960s, many States enacted Jim Crow laws to promote racial segregation. Here are some samples. “No person . . . shall require any white female nurse to nurse in wards . . . in which negro men are placed.” (Alabama) “[I]t shall be unlawful for any amateur colored baseball team to play baseball in any vacant lot or baseball diamond within two blocks of any playground devoted to the white race.” (Georgia) “Books shall not be interchangeable between white and colored schools . . .” (North Carolina) “Any instructor who shall teach in any school . . . where members of the white and colored race are . . . enrolled . . . shall be guilty of a misdemeanor . . .” (Oklahoma) “Any person . . . who shall be guilty of printing, publishing or circulating . . . matter urging or presenting . . . arguments or suggestions in favor of social equality . . . shall be guilty of a misdemeanor.” (Mississippi)

De Jure Segregation

When the Supreme Court held separate-but-equal facilities to be constitutional in *Plessy* in 1896, the States had the law on their side. Jim Crow laws, named for a character in minstrel shows, limited voting rights and required separate facilities for African Americans. Similar laws legalized Mexican American segregation in Texas and throughout the Southwest. **What federal law quickened the pace of desegregation?**



Separate but equal

De Jure, De Facto Segregation By the fall of 1970, school systems characterized by **de jure** segregation—segregation authorized by law—had been abolished. That is not to say that desegregation had been fully accomplished, however—far from it.⁵

Many recent integration controversies have arisen in places where the schools have never been segregated by law. They have occurred, instead, in communities in which **de facto** segregation has long been present, and continues. **De facto** segregation is segregation that exists in fact, even if no law requires it. Housing patterns have most often been its major cause. The concentration of African Americans in certain sections of cities inevitably led to local school systems in

which the student bodies of some schools are largely African American. That condition is quite apparent in many northern as well as southern communities today.

Efforts to desegregate those school systems have taken several forms over recent decades. Thus, for example, school district lines have been redrawn and the busing of students out of racially segregated neighborhoods has been tried. Those efforts have brought strong protests in many places and violence in some of them.

The Court first **sanctioned** busing in a North Carolina case, *Swann v. Charlotte-Mecklenburg Board of Education*, 1971. There it held that: “Desegregation plans cannot be limited to the walk-in school.” Busing has been used since then to increase the racial mix in many school districts across the country—in some by court order, in others voluntarily.

In recent years, a growing number of school systems have turned to **socioeconomic** status—

sanction
v. to authorize or permit

socioeconomic
adj. social and economic

⁵ Some States, several school districts, and many parents and private groups sought to avoid integrated schools through established or, often, newly created private schools. On this point, see the Court's holding in *Runyon v. McCrary*, 1976, page 584.

ANALYZE A MAP OF SEGREGATION LAWS

Display Transparency 21C, Segregation in 1954. Then ask:

- How did historical events influence the pattern of segregation? (Prior to and during the Civil War, antislavery sentiment was strong in the North. Slavery was critical to the economy of the South, and race-based discrimination was a social norm. After slavery was abolished, State laws mandating segregation continued.)
- Where would you expect de jure segregation to be strongest? (in the South)
- Why do you think the States had many different policies on segregation? (Policies reflected local conditions and attitudes toward segregation.)
- How did the Court's decision in the *Brown* case change the pattern of regional variations in laws on segregation? (made all forms of de jure segregation illegal)
- Do you think voluntary desegregation would have occurred over time? Why or why not?

CREATE A TIMELINE OF CIVIL RIGHTS

Organize students into six groups to create an illustrated timeline of civil rights. Assign each group one of the cases below. Groups should research, illustrate, and write an extended caption that describes the issues of the case and how it changed the interpretation of “equal protection.”

- *Plessy v. Ferguson*, 1896 (ruled that 14th Amendment guarantee of equal protection required equal public facilities for the two races, not equal access to the same facilities)
- *Missouri ex rel. Gaines v. Canada*, 1938 (acknowledged that separate schools were not equal; required Missouri to admit Gaines to the State's one law school or establish a separate but equal school for Gaines)
- *Sweatt v. Painter*, *McLaurin v. Oklahoma*, 1950 (determined that separate educational facilities were not equal)
- *Brown v. Board of Education*, 1954 (overruled *Plessy v. Ferguson*; ruled that racial segregation was inherently unequal)
- *Alexander v. Holmes County Board of Education*, 1969 (required States to stop delaying and act more aggressively to end segregation; time for “all deliberate speed” was over)
- *Swann v. Charlotte-Mecklenburg Board of Education*, 1971 (allowed use of busing to increase racial diversity in public schools)

Background

INTEGRATING CENTRAL HIGH Ernest Green, the first black student to graduate from Central High School in Little Rock, Arkansas, recalled his experience: “The *Brown* decision made me feel that the U.S. Constitution was finally working for me. . . . I could believe I was a full citizen, not a second class citizen as segregation had made me feel. . . . Initially, a number of students signed up to enroll, but . . . only nine . . . survived the pressure to quit. . . . [W]hen we tried to attend school, we were met by an angry white mob and armed soldiers. . . . Finally, President Dwight Eisenhower called out the [army] to protect us. . . . Once we got inside, it was like being in a war zone. We were harassed, our books were destroyed. . . . [At graduation] I knew that not only had I achieved something for myself, but I had broken a barrier as well.” (Ernest Green, *Perspectives: Readings on Contemporary American Government*)

Answers

Caption Civil Rights Act of 1964


DISTRIBUTE CORE WORKSHEET

Distribute the Chapter 21 Section 2 Core Worksheet (Unit 5 All-in-One, p. 205). The worksheet shows a cartoon about school integration. Explain that students will analyze a political cartoon that focuses on the impact of the Supreme Court's desegregation order in *Brown v. Board of Education*.

Name _____ Class _____ Date _____

CHAPTER 21 **CORE WORKSHEET**
Section 2 **Equality Before the Law** **3**

Study the cartoon below and then answer the questions that follow.



1. This cartoon appeared in 1977. What is the cartoonist saying?

2. To what does the title refer, and why do you think the cartoonist chose this title for the cartoon?

3. Does this cartoon depict de jure segregation or de facto segregation? Explain.

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L2 Differentiate Ask: **What does the title mean?** (*Desegregation is occurring little by little.*) **What does the doorway lead to?** (*a desegregated classroom*) **What race of students is trying to open the door?** (*African American students*)

L4 Differentiate Ask students to point out all the symbolism used in the cartoon.

EXTEND THE LESSON

L3 L4 Have students complete the Chapter 21 Extend Worksheet (Unit 5 All-in-One, p. 207), which compares the dissenting opinion of Justice Harlan in *Plessy v. Ferguson* with the majority opinion of Chief Justice Earl Warren in *Brown v. Board of Education of Topeka*.

Checkpoint
Where does the Constitution specifically reference gender?

in particular, to income rather than race—in assigning students to schools within the district. That is, they have tried to promote schools with economically diverse student bodies. The results appear to be promising, both in terms of maintaining integrated schools and in improving the performance of disadvantaged students.

Segregation in Other Fields

Public schools have not been fully integrated. But legally enforced racial segregation in all other areas of life has been eliminated. In the process, many State and local laws have either been repealed or they have been struck down by the courts.

The Supreme Court took a leading role in that process—holding in a number of cases that segregation by race is unconstitutional in other areas as well. Thus, it has held that the 14th Amendment's Equal Protection Clause forbids segregation in public swimming pools and all other public recreational facilities, *Baltimore v. Dawson*, 1955; local transportation, *Gayle v. Browder*, 1956; and State prisons and local jails, *Lee v. Washington*, 1968.⁶ The High Court struck down all State miscegenation laws (statutes forbidding interracial marriages) in *Loving v. Virginia*, 1967.

Classification by Gender

The Constitution speaks of the civil rights of “the people,” “persons,” and “citizens.” Nowhere does it make its guarantees only to “men” or separately to “women.” Its only reference to gender is in the 19th Amendment, which forbids denial of the right to vote “on account of sex.” Gender has long been used as a basis of classification in the law, however. That practice reflected society's long-held view of the “proper” role of women. Most often, laws that treated men and women differently were intended to protect “the weaker sex.” Over the years, the Court read that view into the 14th Amendment.

⁶ *Gayle v. Browder* stemmed from the lengthy bus boycott in Montgomery, Alabama—the event that first brought Dr. Martin Luther King, Jr., to national attention.



▲ In response to *United States v. Virginia*, 1996, women now attend the Virginia Military Institute.

First Tests In the first case to challenge sex discrimination, *Bradwell v. Illinois*, 1873, the Court upheld a State law barring women from the practice of law. In that case, Justice Joseph P. Bradley wrote that:

PRIMARY SOURCE

The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.

—Concurring Opinion

Even as late as 1961, in *Hoyt v. Florida*, the Court could find no constitutional fault with a law that required men to serve on juries, but gave women the choice of serving or not.

Circumstances Today Matters are far different today. The Court now takes a very close look at cases involving claims of sex discrimination. It first did so in *Reed v. Reed*, 1971; there, it struck down an Idaho law that

Teacher-to-Teacher Network

ALTERNATE LESSON PLAN Have your students read Dr. Martin Luther King, Jr.'s “I Have a Dream” speech and his “Letter From Birmingham Jail.” Students can work in groups to identify reasons why mainstream society wanted to take segregation slowly, and reasons why King wanted to speed up the process.

To see this lesson plan, go to



Answers

Checkpoint in the 19th Amendment, which forbids denial of the right to vote “on account of sex”

gave fathers preference over mothers in the administration of their children's estates.

Since then, the Supreme Court has found a number of sex-based distinctions to be unconstitutional. In *Taylor v. Louisiana*, 1975, it held that the Equal Protection Clause forbids the States to exclude women from jury service. Among other examples of that line of cases, it struck down an Oklahoma law that prohibited the sale of beer to males under 21 and to females under 18, *Craig v. Boren*, 1976. It also found the practice of refusing to admit women to the rigorous citizen-soldier program offered by a public institution, the Virginia Military Institute, to be constitutionally unacceptable, *United States v. Virginia*, 1996.

The Court's changed attitude in cases involving sex-based discrimination was put this way in the majority opinion in *Frontiero v. Richardson* in 1973:⁷

⁷ In this case, the Court for the first time struck down a federal law providing for sex-based discrimination, as a violation of the 5th Amendment's Due Process Clause. That law gave various housing, medical, and other allowances to a serviceman for his wife and other dependents, but it made those same allowances available to a servicewoman only if her husband was dependent on her for more than half of his support.

PRIMARY SOURCE

There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage.

—Justice William J. Brennan, Jr.

Not all sex-based distinctions are unconstitutional, however. The Court has upheld a Florida law that gives an extra property tax exemption to widows, but not to widowers, *Kahn v. Shevin*, 1974; an Alabama law forbidding women to serve as prison guards in all-male penitentiaries, *Dothard v. Rawlinson*, 1977; and the federal selective service law that requires only men to register for the draft and excludes women from any future draft, *Rostker v. Goldberg*, 1981.

In effect, these cases say this: Classification by gender is not in and of itself unconstitutional. However, laws that treat men and women differently will be overturned by the courts unless (1) they are intended to serve an "important governmental objective" and (2) they are "substantially related" to achieving that goal.

Checkpoint
What does the Court say today about gender-based discrimination?

SECTION 2 ASSESSMENT

1. Guiding Question Use your completed graphic organizer to answer this question: How has the interpretation of the guarantee of equal rights changed over time?

Key Terms and Comprehension

2. (a) What does the 14th Amendment's Equal Protection Clause say?
(b) To whom was it originally directed?
3. (a) What two tests does the High Court use when deciding equal protection cases? (b) How do the tests differ? (c) Summarize two cases that illustrate those tests.
4. (a) What is **integration**? (b) Which Supreme Court case led to public school integration?
5. (a) What is the difference between **de jure** and **de facto** segregation?

(b) What actions have school systems taken, voluntarily or otherwise, to end de facto segregation?

Critical Thinking

6. **Draw Conclusions** (a) Why do you think the Supreme Court was vague about the time frame in which to end segregation ("with all deliberate speed")? (b) How did the Civil Rights Act of 1964 speed up the process of integration?
7. **Recognize Bias** (a) What do you suppose Justice Bradley meant by separate "spheres and destinies of man and woman"? (b) Which gender-based distinctions are considered constitutional today? (c) Do you agree or disagree with those distinctions?

Essential Questions Journal
To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

Quick Write

Problem-Solution Essay: Consider Solutions Use the problem you identified in Section 1 and research possible solutions to that problem. What solutions have been tried successfully? Unsuccessfully? In a chart, evaluate the pros and cons of each solution.

Assessment Answers

1. Historically, *equal rights* applied only to white males. Today the phrase applies to minorities and women as well.
2. (a) "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." (b) newly freed slaves
3. (a) rational basis and strict scrutiny (b) rational basis applied to cases that achieve a governmental purpose or public policy goal; strict scrutiny applied to cases about fundamental

rights or suspect classifications (c) *Michael M. v. Superior Court*, 1981, based on goal of preventing teenage pregnancies; *Orr v. Orr*, 1979, alimony only for women held unconstitutional, does not serve compelling governmental interest

4. (a) process of desegregation (b) *Brown v. Board of Education of Topeka*, 1954

5. (a) de jure: segregation by law; de facto: segregation in fact, even if no law requires it (b) school district lines redrawn, students bused out of segregated neighborhoods, assigning students to schools based on socioeconomic status to achieve economic diversity

Assess and Remediate

- L3** Collect the Core Worksheet and assess students' work.
- L3** Assign the Section 2 Assessment questions.
- L3** Quiz A (Unit 5 All-in-One, p. 209)
- L2** Quiz B (Unit 5 All-in-One, p. 211)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Understanding equal protection issues (Questions 1, 2, 3)	Have students select five cases in the Supreme Court Glossary and determine which test the Court would use to analyze them under the Equal Protection Clause. Remind students that economic or social regulations generally fall under the rational basis test; constitutional or racial issues receive strict scrutiny.
History and types of segregation (Questions 4, 5, 6)	Have students illustrate a "path" of desegregation, beginning with <i>Plessy v. Ferguson</i> and citing the cases and acts in this section.
Gender-based discrimination (Question 7)	Ask students to modernize the "separate spheres" argument by finding photos or drawings showing then and now images of women in the home, school, workplace, sports, and so on. Students should label the visuals with cases that expanded women's rights.

Answers

Checkpoint It must serve an "important governmental objective" and be "substantially related" to achieving that goal.

6. (a) possible answer: to allow local communities time to develop orderly plans to implement desegregation smoothly (b) forbade the use of federal funds to any State or local activity in which racial segregation was practiced
7. (a) possible answer: each gender group has its own place in society (b) extra property tax exemption to widows, women forbidden to serve as prison guards in all-male penitentiaries, women excluded from the draft (c) Answers will vary.
- QUICK WRITE** Remind students to list both strengths and weaknesses of possible solutions.

Get Started

LESSON GOAL

- Students will examine the Supreme Court case *Brown v. Board of Education* by analyzing the arguments from both sides and considering initial reactions to the Court's ruling.

BEFORE CLASS

Have students read the feature as homework or at the beginning of class.

Teach

STUDY AND BRAINSTORM ARGUMENTS

Have volunteers read aloud the arguments in the text for Brown and then for the Board of Education. Ask: **Which single argument would most compel you to support one side or the other? Why?** Then ask students to brainstorm additional arguments for Brown, and list these on the board. Do the same for Board of Education. The 14th Amendment states that people should be treated equally; it does not state that people should be treated the same. Ask: **How would you refute each argument from the opposing side?**

Is Segregation in Schools Constitutional?

The Supreme Court ruled unanimously that it was not. Third-grader Linda Brown who lived in Topeka, Kansas, had to walk a mile through a dangerous railroad yard and then take a bus to get to school. There was another school much closer to her home, but school officials would not allow her to attend that school because it was reserved for white students only. Separate elementary schools for whites and nonwhites were maintained by Topeka's Board of Education.

Oliver Brown, Linda's father, turned to the local chapter of the National Association for the Advancement of Colored People (NAACP) for help. The Topeka chapter of the NAACP believed it had the "right plaintiff at the right time," and used Brown's complaint, along with those of 13 other African American parents in Topeka, to take the case for school desegregation to the United States District Court for the District of Kansas. In the early 1950s, segregation of the races was legal, and in some States, required. Kansas gave local school districts a choice of integrating their schools. Like many States at the time, however, it chose segregation with the condition that the minority schools were to be equal to the white schools. The District Court felt "compelled" to rule in favor of the Board of Education, citing *Plessy v. Ferguson*, which allowed separate but equal facilities. The NAACP appealed the case to the Supreme Court, where it was combined with three other cases calling for school desegregation in Delaware, South Carolina, and Virginia.

In a unanimous 9–0 decision, the Supreme Court overturned the "separate but equal" doctrine. Chief Justice Earl Warren delivered the opinion of the Court: "we



Before *Brown*, schools designated for African Americans were separate but definitely not equal in such terms as buildings, library resources, and teachers' salaries.



Linda Brown was the subject of the landmark case. The case was a class action suit, but Oliver Brown was deliberately named plaintiff because he was male.

SKILLS DEVELOPMENT

COMPARE VIEWPOINTS

Before students discuss reactions to the *Brown* ruling, you may want to review information on comparing viewpoints in the Skills Handbook p. S15.

Supreme Court Notes

CONNECTION TO PLESSY Although many editorials at the time hailed the Supreme Court decision in *Brown* as a healing democratic action, others were bitter that the Court dared to legislate social norms. This attitude had been introduced in Justice Henry Brown's majority opinion in *Plessy v. Ferguson* 60 years earlier. He stated that Plessy's argument "assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals."

cannot turn the clock back to 1868 when the [14th] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws. . . .

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . . To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . . We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

Arguments for Brown

- Segregating African American students from white students makes them feel inferior.
- A sense of inferiority affects a child's motivation to learn.
- Segregation results in the fundamentally unequal education of minority students.

Arguments for Board of Education of Topeka

- Minority schools in Topeka are equal in every way to, and sometimes have better programs than, schools for whites.
- There is no conclusive evidence that segregation by race affects the education of children.
- Segregated schools prepare black children for the segregated society they will face in adulthood.

Thinking Critically

1. On what basis did the District Court reach its decision? On what basis did the Supreme Court reach its decision?
2. **Constitutional Principles** How does this case reflect the principle of equal protection?



Thurgood Marshall, the lead attorney who argued for desegregation, would become the first African American Supreme Court justice in 1967.

People waited in long lines outside the Supreme Court building, hoping for the opportunity to hear the Court deliver its opinion in this landmark case.

As a result of the *Brown* ruling, classrooms across the country were required to desegregate.

DISCUSS INITIAL REACTION

Ask students what they think initial white reactions were to the *Brown* ruling. (*Many in the South were shocked and angered.*) Have students consider reaction to the ruling from an African American student who would face prejudice at a desegregated school, and from an African American teacher who likely faced unemployment.

L3 Differentiate Have students suppose that they are parents of a minority high school student who enters a formerly segregated school. Ask them to answer the following question: **How would you prepare your child to face a racially charged environment?**

RESEARCH ACCOMPANYING CASES

Organize students into three groups, and have each group research the following cases that were ultimately combined with *Brown*: in Delaware, *Gebhart v. Belton*; in South Carolina, *Briggs v. Elliott*; and in Virginia, *Davis v. County School Board of Prince Edward County*. Groups should provide information regarding the plaintiffs, their actions, and the case's path to the Supreme Court.

L3 Differentiate Have groups present their cases as interviews or oral histories. The Web site of the University of Michigan Digital Archive: *Brown v. Board of Education* has sample oral histories.

EXTEND THE LESSON

L3 L4 Differentiate Assign the Landmark Decisions of the Supreme Court Worksheet (Unit 5 All-in-One, p. 229).

L2 Differentiate Assign the adapted Landmark Decisions of the Supreme Court Worksheet (Unit 5 All-in-One, p. 231).

Assess and Remediate

Have students summarize the majority opinion of the Court. Ask them to explain the significance of the unanimous ruling of the justices.

Correct students' answers to the Thinking Critically questions.

IN THE NEWS

Students can learn more about *Brown v. Board of Education* at PearsonSuccessNet.com

Answers

1. the *Plessy v. Ferguson* precedent that allowed separate but equal facilities; on intangible factors such as segregation generating feelings of inferiority
2. By desegregating schools, all students are provided with equal access to education.

Background

THE DOLL TEST In its argument before the Court, the NAACP introduced many sociological tests to prove that school segregation was psychologically harmful to African American children. In Footnote 11 of the *Brown* opinion, Dr. Kenneth Clark is listed. In the early 1950s, he and his wife Mamie performed a series of tests involving black and white dolls. African American children were asked to point to the "good" doll, and the majority pointed to the white doll. The tests had an impact on the Court's decision. The sociological tests are controversial today, however, with historians citing their use as nonscientific.

GUIDING QUESTION

What is the history of civil rights legislation from Reconstruction to today?

Sample answers for timeline:

1964 Civil Rights Act

1968 Civil Rights Act (Open Housing Act)

1972 Title IX of Education Amendments

1978 *Regents of the University of California v. Bakke*

Get Started

LESSON GOALS

Students will . . .

- trace the development of civil rights legislation by relating it to historical actions of States designed to nullify African Americans' rights.
- analyze the policy of affirmative action and why it is controversial by studying political cartoons and by exploring the issues surrounding it.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 212) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 213)

BELLRINGER

Check students' prior knowledge by displaying Transparency 21D, which is a quote from President Lyndon Johnson. Have students answer the questions in their notebooks.

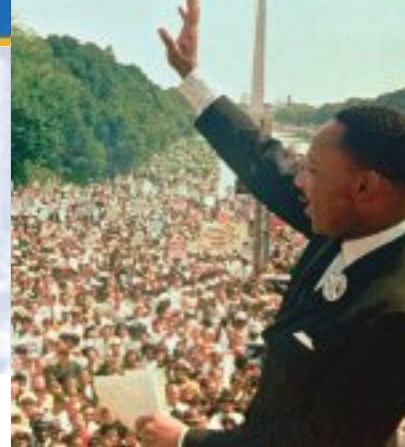
SKILLS DEVELOPMENT

ANALYZE IMAGES

To practice analyzing images in this section, use the Chapter 21 Skills Worksheet (Unit 5 All-in-One, p. 217). You may want to teach the skill explicitly before discussing civil rights and voter rights legislation. For L2 and L1 students, assign the adapted Skill Activity (Unit 5 All-in-One, p. 218).

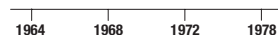
SECTION 3

Federal Civil Rights Laws



Guiding Question

What is the history of civil rights legislation from Reconstruction to today? Use a timeline like the one below to take notes on the section.



Political Dictionary

- affirmative action
- quota
- reverse discrimination

Objectives

1. Outline the history of civil rights legislation from Reconstruction to today.
2. Explore the issues surrounding affirmative action.

Image Above: Dr. Martin Luther King, Jr., acknowledges the crowd at his "I Have a Dream" speech, August 28, 1963.

Those who, for one reason or another, oppose the enactment of civil rights legislation often rely on this observation: "You can't legislate morality." That is, racism, sexism, and other forms of discrimination will not be eliminated by simply passing a law.

The Reverend Dr. Martin Luther King, Jr., responded to that contention this way: "Judicial decrees," he said, "may not change the heart, but they can restrain the heartless." Clearly, Congress has agreed with Dr. King—as it has enacted a number of civil rights laws over the past 40 years or so.

Civil Rights: Reconstruction to Today

From the 1870s to the late 1950s, Congress did not pass a single piece of meaningful civil rights legislation. Several factors contributed to that fact. Among the major ones: Through that period, the nation's predominantly white population was generally unaware of or little concerned with the plight of African Americans, Native Americans, or other nonwhites in this country. And southern white Democrats, bolstered by such devices as the seniority system and the filibuster, held many of the most strategic posts in Congress.

That historic logjam was finally broken in 1957, largely as a result of the pressures brought to bear by the civil rights movement led by Dr. King (see Chapter 6, Section 3). Beginning in that year, Congress passed a number of civil rights laws—notably, the Civil Rights Acts of 1957, 1960, 1964, and 1968; the Voting Rights Acts of 1965, 1970, 1975, 1982, and 2006; and Title IX in the Education Amendments of 1972.⁸

The Civil Rights Act of 1964 The 1964 law is the most far-reaching of those statutes. It was passed after the longest debate in Senate history (83 days), and only after the Senate invoked cloture (end of debate) to kill a filibuster.

⁸ The 1957 and 1960 laws set up modest safeguards for the right to vote. You considered the voting rights provision in those statutes in Chapter 6, Section 3. The 1957 law created the U.S. Commission on Civil Rights. The commission is an independent eight-member executive branch agency that is supposed to monitor the enforcement of the various civil rights laws, investigate cases of alleged discrimination, and report its findings to the President, Congress, and the public.

Focus on the Basics

FACTS: • Beginning in 1957, Congress passed several acts to guarantee the civil rights of African Americans, other minorities, and women. • The policy of affirmative action requires most employers to take positive steps to remedy the effects of past discrimination. • Supporters and critics of affirmative action have taken their debate to the Supreme Court, Congress, State legislatures, and the voting booth.

CONCEPTS: individual rights and responsibilities, equal protection

ENDURING UNDERSTANDINGS: • Congress passed civil rights laws to carry out the Constitution's insistence on the equality of all before the law. • The controversy surrounding affirmative action continues today.

Beyond its voting rights provisions, the 1964 law outlaws discrimination in a number of areas. With its several later amendments, the law's major sections now:

- provide that no person may be denied access to or refused service in various “public accommodations”—hotels, motels, restaurants, theaters, and the like—because of race, color, religion, national origin, or physical disability (Title II).⁹
- prohibit discrimination against any person on grounds of race, color, religion, national origin, sex, or physical disability in any program that receives any federal funding (Title VI).
- forbid both employers and labor unions to discriminate against any person on grounds of race, color, religion, sex, physical disability, or age in job-related matters (Title VII).¹⁰

The Civil Rights Act of 1968 The Civil Rights Act of 1968 is often called the Open Housing Act. With minor exceptions, it forbids anyone to refuse to sell or rent a dwelling to any person on grounds of race, color, religion, national origin, sex, or disability. It also forbids refusal to sell or rent to a family with children.

At first, the burden of enforcing the law fell on those persons who claimed to be victims of housing discrimination; they could seek damages from alleged offenders. Congress finally strengthened the law in 1988, to allow the Justice Department to bring criminal charges against those who violate its terms. Still, housing remains among the most segregated areas of American life today.

Title IX In Title IX of the Education Amendments of 1972, Congress added a key gender-based guarantee to the provisions of the Civil Rights Act of 1964. Title IX forbids discrimination on the basis of gender “in any education program or activity receiving Federal financial assistance.” The statute intends to

ensure that women receive equal treatment in all aspects of education. Its provisions apply to all schools, public and private, that receive federal funds, and nearly all of them do.

Since its passage, Title IX has had its most telling effect on school athletics programs, especially at the college level, by requiring roughly equal funding and opportunities for women and men. The law has been in effect for nearly four decades now; still, it continues to generate controversy.

Affirmative Action

These civil rights statutes all come down to this: Discriminatory practices based on such factors as race, color, national origin, sex, or disability are illegal. But what about the effects of *past* discrimination? Consider an African American who, for no reason of his or her own making, did not get a decent education and so today cannot get a decent job. Of what real help to that person are all of those laws that make illegal today what was done years ago?

So far, the Federal Government's chief answer to this troubling question has been a policy of **affirmative action**. That approach requires that most employers take positive steps (affirmative action) to remedy the effects of past discriminations. The policy applies to all agencies of the Federal Government, States and their local governments, and private employers who sell goods or services to any agency of the Federal



These words would have been added to the Constitution if three additional States had ratified the Equal Rights Amendment (ERA). *Why do you think the ERA was not ratified?*



⁹ Congress based this section of the law on its commerce power. See Chapter 11, Section 2. Title II covers those places in which lodgings are offered to transient guests and those where a significant portion of the items sold have moved in interstate commerce. The Supreme Court upheld Title II and the use of the Commerce Clause as a basis for civil rights legislation in *Heart of Atlanta Motel, Inc. v. United States*, 1964.

¹⁰ The five-member Equal Employment Opportunity Commission (EEOC), an independent executive branch agency, enforces Title VII.

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

DISCUSS BELLRINGER RESPONSES

Have students share their answers to the Bellringer. (1. *civil rights demonstrations*; 2. *African Americans were not “trained” for the “race” and so should be given an advantage now*. 3. *affirmative action*)

RELATE ACTIONS TO LEGISLATION

Ask: **Why were so many civil rights and voting rights laws needed?** Discuss the actions that States took to nullify African American voting and other rights: poll taxes; literacy tests; vouchers of “good character” needed; the white primary; voter registration grandfather clauses; gerrymandered or annexed election districts to reduce African American voting strength and to minimize the number of black elected officials. Then have students cite federal legislation and Court cases from the section that tried to remedy this discrimination. On the board, list students’ citations as well as the legislation below. Point out how federal responses to these actions began slowly on a case-by-case basis before being expanded to nationwide jurisdiction.

Civil Rights Act of 1957: Attorney General given authority to begin lawsuits against local violations of the 15th Amendment

Civil Rights Act of 1960: federal courts could appoint referees to conduct voter registration, but only after a judicial finding of voting discrimination

Voting Rights Act of 1965: strengthened enforcement of the 15th Amendment nationwide; prohibited all literacy requirements for voting; federal examiners ensured registration; federal observers oversaw elections; in certain jurisdictions, any changes in voting procedures had to be approved by the Federal Government

1975: amendments to 1965 law added voting protections for Hispanic, Asian, and Native American citizens

Answers

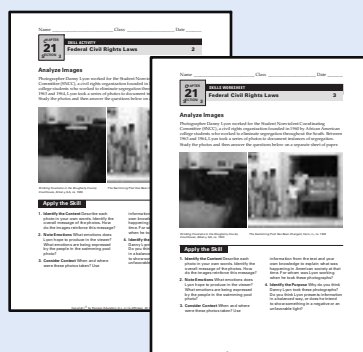
Checkpoint called Open Housing Act; forbids anyone to refuse to sell or rent a dwelling to any person on grounds of race, color, religion, national origin, sex, disability, or families with children

Caption because women’s rights were already protected as “citizens’ rights”

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 21, Section 3:

- L3** Reading Comprehension Worksheet (p. 212)
- L2** Reading Comprehension Worksheet (p. 213)
- L3** Core Worksheet (p. 215)
- L3** Skills Worksheet (p. 217)
- L2** Skill Activity (p. 218)
- L3** Quiz A (p. 219)
- L2** Quiz B (p. 220)



DISTRIBUTE CORE WORKSHEET


Distribute the Chapter 21 Section 3 Core Worksheet (Unit 5, All-in-One, p. 215), which asks students to analyze affirmative action through political cartoons. Discuss students' responses to the questions.

Name _____ Class _____ Date _____


CHAPTER 21
Section 3
CORE WORKSHEET
Federal Civil Rights Laws 3

Analyze the cartoons below and then answer the questions on the next page.

Cartoon A



Cartoon B



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L2 ELL Differentiate Have L2 students complete the worksheet with an L3 or L4 partner.

DEBATE AFFIRMATIVE ACTION

Organize students into four groups, and have them prepare to debate the issue of affirmative action from one of these points of view:

- Dr. Martin Luther King, Jr.
- Allan Bakke
- White high school senior who wants to enter college
- Minority high school senior who wants to enter college

Have students use the Debate strategy (p. T25) to formulate their arguments. Groups should summarize the validity of affirmative action from their point of view. Students should make strong arguments with supporting information from the Constitution and Court precedents. After the debate, debrief the activity, allowing students to state which perspectives used the best evidence to prove their point.

Answers

Analyzing Timelines By holding that race could be a narrowly tailored factor in affirmative action decisions, the Court left the door open to future interpretations.

Equal Rights and Affirmative Action

1800s

1868 States ratify the **14th Amendment**, which includes the Equal Protection Clause.

1896 The Supreme Court decision in *Plessy v. Ferguson* establishes the separate-but-equal doctrine.

1900s

1954 In *Brown v. Board of Education*, the Court overrules *Plessy*, holding that separate-but-equal public schools are unconstitutional.

1964 Civil Rights Act of 1964 overturns all Jim Crow laws.

African Americans sit in protest at a whites-only lunch counter in North Carolina in 1960. ▶



▶ **Analyzing Timelines** Affirmative action programs arose in the 1960s to help rectify the harm suffered by minorities as a result of discrimination. **How did the two Michigan cases in 2003 leave the legal status of affirmative action unsettled?**

Government. The Federal Government began to demand the adoption of affirmative action programs in 1965.

To illustrate the policy, take the case of a company that does business with the Federal Government. It must adopt an affirmative action plan designed to make its workforce reflect the general makeup of the population in its locale. The plan must include steps to correct or prevent inequalities in such matters as pay, promotions, and fringe benefits.

For many employers this has meant that they must hire and/or promote more workers with minority backgrounds and more females. The share of a group necessary to satisfy a particular affirmative action requirement—say, the number of females in a company's workforce or the number of African Americans in a school's student body—is often called a **quota**.

Reverse Discrimination? Affirmative action policies remain highly controversial today. This is principally because those policies necessarily involve race-based and/or gender-based classifications.

Critics argue that affirmative action programs amount to **reverse discrimination**, or discrimination against the majority group. Affirmative action demands that preference be given to females and/or nonwhites solely on the basis of sex or race. Critics say that the Constitution requires that all public policies be "color blind."

The opponents of affirmative action have attacked the policy at the State and local levels in several places in recent years. Most often, they have relied primarily on the reverse discrimination argument as they have done so.

In 1996, California's voters gave overwhelming approval to a measure that eliminated nearly all affirmative action programs conducted by public agencies in that State. Since then, the voters in Washington (in 1998) and in Michigan (in 2004) have adopted measures nearly identical to California's.

The Bakke Case The Supreme Court decided its first major affirmative action case, *Regents of the University of California v. Bakke*, in 1978. Allan Bakke, a white male, had been denied admission to the university's medical school at Davis. The school had set aside 16 of the 100 seats in each year's entering class for nonwhite students. He sued the university, charging it with reverse discrimination and,

Political Cartoon Mini-Lesson

THE EQUAL RIGHTS AMENDMENT Congress passed the ERA in 1972 with a seven-year deadline for ratification. A three-year extension was added in 1979. Only 35 of the required 38 States approved it, however, so the ERA failed. Display Transparency 21E, Equal Rights Amendment. Ask: **Why do you think some women opposed the ERA?** (They believed the ERA would take away traditional women's rights, such as alimony and all-female colleges. They also believed women might get drafted into the armed forces.) **According to the cartoon, what is ironic about the ERA's failure to pass from the point of view of one woman's employment?** (She must go to her low-paying, menial job cleaning the floors.) Have students debate this topic: **Does the United States still need an Equal Rights Amendment to guarantee the rights of women?**



▲ Title IX increased opportunities for women to participate in sports.

1972 Title IX of the Education Amendments forbids gender discrimination in all federally funded educational programs.

1978 In *Regents of the University of California v. Bakke*, the Court rules that affirmative action is acceptable, but strict quotas are not.

1990 **Americans with Disabilities Act** prohibits discrimination on the basis of disability.

1995 In *Adarand Constructors v. Peña*, the Court finds that affirmative action programs will be upheld only if shown to serve some “compelling government interest.”

2000s

2003 The Court finds that a State university may take race into account in admitting students, *Grutter v. Bollinger*, but it may not blindly give extra weight to race in that process, *Gratz v. Bollinger*.

2007 In *Parents Involved v. Seattle School District* and *Meredith v. Jefferson County Board of Education*, the Court overturns school integration policies that rely too heavily on race.

so, a violation of the Equal Protection Clause. By a 5–4 majority, the Court held that Bakke had been denied equal protection and should be admitted to the medical school.

A differently composed 5–4 majority made the more far-reaching ruling in the case, however. Although the Constitution does not allow race to be used as the *only* factor in the making of affirmative action decisions, that majority of the justices held that both the Constitution and the 1964 Civil Rights Act do allow its use as one among several factors in such situations.

Later Cases The Court has decided several affirmative action cases since *Bakke*. In some of them it has upheld quotas, especially in such industries as construction, where longstanding discrimination was involved.

Note, however, that the High Court has also held that quotas can be used in only the most extreme situations. Thus, the Court held in *Richmond v. Croson*, 1989, that the city of Richmond, Virginia, had not shown that its minority set-aside policy was justified by past discrimination.

Johnson v. Transportation Agency of Santa Clara County, 1987, marked the first time the Court decided a case of preferential treatment on the basis of sex. The justices held that neither the Equal Protection Clause nor Title VII

forbids the promotion of a woman rather than a man, even when he scored higher on a qualifying interview.

The current Supreme Court’s conservative bent can be seen in its most recent affirmative action decisions. Thus, the Court’s decision in *Adarand Constructors v. Peña*, 1995, marked a major departure from its previous rulings in such cases. Until *Adarand*, the Court had regularly upheld affirmative action laws, regulations, and programs as “*benign*” instances of “race-conscious policymaking.” By this, the Court meant that it considered them to be mild but necessary restraints on behavior.

Adarand arose when a white-owned Colorado company, Adarand Constructors, Inc., challenged an affirmative action policy of the Federal Highway Administration (FHWA). Under that policy, the FHWA gave bonuses to highway contractors if 10 percent or more of their construction work was subcontracted to “socially and economically disadvantaged” businesses, including those owned by racial minorities.

The Court held that henceforth all affirmative action cases will be reviewed under strict scrutiny—that is, affirmative action programs will be upheld only if they can be shown to serve some “compelling governmental interest.” (See page 619.)

benign
adj. not harmful

Tell students to go to the Interactivity for an interactive version of the timeline regarding equal rights and affirmative action.

EXTEND THE LESSON

L3 Differentiate Have students work in pairs to research the annual increase in African American voter registration after 1965, following the passage of the Civil Rights Acts and Voting Rights Acts. Students should put the information they find into a bar graph on poster board with an appropriate title.

L2 LPR ELL Differentiate Provide students with the statistics below showing changes in voter registration from 1965 to 1988. Have them calculate the “gap” columns. Ask: **Which State had the largest gap in 1965? (Mississippi) in 1988? (North Carolina)**

Voter Registration Rates (1965 vs. 1988)						
	March 1965			November 1988		
	Black	White	Gap	Black	White	Gap
AL	19.3	69.2	49.9	68.4	75.0	6.6
GA	27.4	62.6	35.2	56.8	63.9	7.1
LA	31.6	80.5	48.9	77.1	75.1	-2.0
MS	6.7	69.9	63.2	74.2	80.5	6.3
NC	46.8	96.8	50.0	58.2	65.6	7.4
SC	37.3	75.7	38.4	56.7	61.8	5.1
VA	38.3	61.1	22.8	63.8	68.5	4.7

Adapted from *Minority Representation and the Quest for Voting Equality* by Bernard Grofman, Lisa Handley and Richard G. Niemi (New York: Cambridge Press, 1992).

Assess and Remediate

L3 Ask students to write a paragraph answering the Chapter Essential Question: **Why are there ongoing struggles for civil rights?** Have students consider such factors as political, economic, or security concerns; the emergence of minority leaders with the determination, skills, and resources to work for change; and the role of the media in making the public aware of discrimination or the effects of discrimination.

L3 Collect the Core Worksheets and assess students’ responses to the questions.

L3 Assign the Section 3 Assessment questions.

L3 Quiz A (Unit 5 All-in-One, p. 219)

L2 Quiz B (Unit 5 All-in-One, p. 220)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

Background

AMERICANS WITH DISABILITIES Inspired by the civil rights movement, people with disabilities pushed for equal treatment. Their efforts led to passage of the Individuals with Disabilities Education Act (IDEA) in 1975 (revised substantially in 1997 and 2004). IDEA guarantees free appropriate public education to children with disabilities. The law guides schools in crafting an individualized education program (IEP) for each child with a disability. In 1990, Congress passed the Americans with Disabilities Act (ADA), banning discrimination against people with disabilities in employment, public services, public accommodations, and telecommunications. The law requires employers to make “reasonable accommodation,” which may include making existing facilities accessible (such as by installing a wheelchair ramp), modifying the job or work schedule, acquiring devices, or modifying equipment and training.

REMEDATION

If Your Students Have Trouble With	Strategies For Remediation
Civil rights legislation (Questions 1, 2, 5)	Have students create annotated timelines of civil rights legislation from Reconstruction to today. Timelines should include brief descriptions of each law or act, how it was decided, and how it relates to other laws or acts on the timeline.
Affirmative action policies (Questions 3, 4, 6)	Have students add the section's affirmative action cases and rulings to their civil rights timelines (see above).

Government online

All print resources are available on the Teacher's Resource Library CD-ROM and online at PearsonSuccessNet.com.

Checkpoint
What was the significance of the Court's ruling in *Adarand*?

The Michigan Cases Two cases, *Gratz v. Bollinger* and *Grutter v. Bollinger*, both involving the admissions policies of the University of Michigan, were combined for decision by the Supreme Court in 2003. The resolution of those two cases marked the High Court's most important statement on affirmative action since its decision in *Bakke* in 1978.

Jennifer Gratz applied for admission to the University as a freshman in 1997, and Barbara Grutter sought to enter the University's law school that same year. Both women are white, and both were rejected in favor of minority applicants with lower grade point averages and lower entry test scores. Both women sued the university and its chief admissions officer, Lee Bollinger, seeking to prevent the University from using race as a factor in admissions.

The Supreme Court held, 6–3, that Gratz's rejection was the result of a race-based quota policy prohibited by the 14th Amendment's Equal Protection Clause. Grutter's rejection was upheld 5–4, however, because the law school employed a much more flexible process in making its admissions decisions.

A majority of the Court found—definitely and unambiguously—that the State of Michigan (and all States) has a compelling interest in the diversity of the student bodies of its public educational institutions. That compelling interest justifies the narrowly tailored use

of race as one factor in the student admissions policies of those institutions. However, Justice Sandra Day O'Connor, writing for the majority, predicted that affirmative action would not be necessary in the future. She wrote, "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."

The Seattle and Louisville Cases The High Court's most recent affirmative action decision came in two cases that were combined for decision in 2007. One of those cases arose in Seattle, Washington (*Parents Involved v. Seattle School District*), and the other in Louisville, Kentucky (*Meredith v. Jefferson County Board of Education*).

Both cases centered on this question: In light of the Supreme Court's decision in *Grutter*, to what extent can public school officials now use race as a factor in assigning students to particular schools in a district as they seek to maintain racially integrated student bodies in that district?

The Court split 5–4 in the two cases. The majority found that the student assignment policies in both Seattle and Louisville relied too heavily on race and so ran afoul of the 14th Amendment's Equal Protection Clause. Indeed, four of the five justices in the majority favored the *total elimination* of race as a factor in school admission decisions.

SECTION 3 ASSESSMENT

Essential Questions Journal

To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

- Guiding Question** Use your completed timeline to answer this question: What is the history of civil rights legislation from Reconstruction to today?

Key Terms and Comprehension

- Cite the three major provisions of the Civil Rights Act of 1964.
- (a)** What does the policy of **affirmative action** require? **(b)** Who must abide by the policy?
- Under what circumstances has the Supreme Court upheld the use of **quotas**?

Critical Thinking

- Demonstrate Reasoned Judgment** **(a)** What does Title IX provide? **(b)** In what situation has it been most controversial? **(c)** Do you agree with the law? Why or why not?
- Synthesize Information** Some nations, such as France, require *gender parity* in government; that is, a certain number of candidates or elected leaders must be women. **(a)** How is this similar to a quota system? **(b)** Do you think the United States should adopt that system? Why or why not?

Quick Write

Problem-Solution Essay: Select the Best Solution Decide which one of the solutions you researched in Section 2 would solve the problem you identified in Section 1. Using supporting facts and details, make a list that evaluates the solution's effectiveness in achieving both short-term gains and long-term goals.

Answers

Checkpoint The Court moved away from regularly upholding affirmative action programs and instead ruled that those programs must prove to serve some "compelling government interest."

Assessment Answers

1. No meaningful legislation passed from the 1870s to the 1950s. First far-reaching law was the Civil Rights Act of 1964, which bans discrimination in public accommodations, in federally funded programs, and in jobs. Title IX (1972) bans gender-based discrimination in education. In 1965, the Federal Government began demanding affirmative action programs to reduce the effects of past discrimination. In the *Bakke* case (1978), the court ruled that affirmative action is acceptable, but strict quotas are not. In *Adarand* (1995), the Court ruled that future affirmative action cases would

be judged under the higher standard of strict scrutiny.

2. Discrimination based on race, color, religion, national origin, or physical disability is banned in public accommodations, in any program that receives any federal funding, and by employers and labor unions in job-related matters.

3. **(a)** employers to take positive steps to remedy effects of past discrimination **(b)** all agencies of the Federal Government, all States and local governments, all private employers who sell goods or services to any federal agency

4. in extreme situations where longstanding, flagrant discrimination was involved

5. **(a)** equal treatment for women in all aspects of education **(b)** school athletics programs, especially in colleges **(c)** Answers will vary.

6. **(a)** It requires that a share of a group be a certain gender. **(b)** Answers will vary.

QUICK WRITE Have students incorporate their lists into a flowchart showing how the solution moves from a short-term gain to a long-term goal.

Writing a Letter to the Editor

Editor:

Regarding the article on additional budget cuts to public education ("Governor Proposes Slashing School Funding," May 9), I believe that every penny spent is a necessary investment in the future of this community. As a junior at Westfield High School, I know that these cuts would place students' futures in greater jeopardy. Last year, 15 percent of the teaching staff and 10 percent of all elective courses were eliminated due to severe reductions in funding. These cuts ultimately impacted the quality of our education, and that is a sacrifice this town should not be willing to make again.

—Thomas Grey, St. Clairsville

The Constitution guarantees all people the right to express their views. Writing a letter to the editor of your local newspaper is your chance to share your opinion about important issues that affect you and your community. Follow these steps to write an effective letter:

1. Briefly summarize the issue. A good letter to the editor should be brief and to the point. Begin your letter by clearly identifying the issue. If you are responding to an article published in the

paper, mention the article by title and publication date in the first sentence. State your opinion up-front.

2. Explain your position. You should explain why you feel the way you do about the issue. Support your explanation with at least one or two specific examples. If you feel particularly passionate about the issue, let your emotions come through in your letter but remember to be civil. Never resort to name-calling or vulgar language. If you do, few people will take your letter seriously.

3. Make a suggestion. The main point of your letter might be to express your opinion, but you could also include suggestions for future actions. If you are writing about a problem in your community, explain what you think can be done to fix it.

4. Identify yourself. Sign your letter with your real name, and provide contact information. Most editors will not print anonymous letters, and they must be able to verify your identity. You can also mention any experiences you have had that are relevant to the issue.

» What do you think?

1. When writing a letter to the editor, why do you think you should be brief and to the point?
2. Why would adding suggestions for action make your letter more effective?
3. **You Try It** Choose an issue that interests you and write a letter to the editor of your local newspaper.



GOVERNMENT ONLINE Citizenship Activity Pack

For activities on writing a letter to the editor, go to
PearsonSuccessNet.com



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Citizenship Activity Pack

L1 L2 If your students need extra support, use the Citizenship Activity Pack lesson *How to Write a Letter to the Editor*. It includes a lesson plan, four sample editorials as handouts, and a model for analyzing the elements of an editorial. Students will work in groups to analyze one of the editorials, write a one-sentence response, and present their work orally to the class. At the end of the lesson, students will have an opportunity to write their own letter to the editor. Students may also access the Citizenship Activity Pack online for activities on writing letters to the editor at **PersonSuccessNet.com**.

LESSON GOALS

- Students will analyze successful editorials before writing their own letters to the editor.

Teach

READ AND IDENTIFY PARTS OF A LETTER

Have students read the Citizenship 101 feature. As a class, identify the various parts of the letter and their purpose.

ANALYZE LETTERS IN NEWSPAPERS

Bring to class enough newspaper editorial sections for each student to have one. Have students analyze the editorials and highlight the main point the writer is trying to make. Then have them place a checkmark next to each criticism the writer makes, and circle each suggestion for action. Finally, have students rate the editorials from best to worst, explaining what made the best one successful in their opinion.

WRITE A LETTER TO THE EDITOR

Have students write their own letters to the editor in response to a news story or letter in the newspaper sections they analyzed in the activity above.

Assess and Remediate

Have students read aloud their letters. Peer-assess the letters using this checklist:

- ___ Had quickly identifiable issue
- ___ Included up-front opinion
- ___ Provided several explanations for opinion
- ___ Included suggestions for future action
- ___ Tone was forceful but civil

Answers

1. possible answers: to hold readers' attention; to fit the newspaper's limited space for letters
2. Adding suggestions for action shows readers that you have carefully and extensively thought this issue through.
3. Letters will vary but should include an opinion, arguments or explanations supporting the opinion, and a suggestion for action.

GUIDING QUESTION

How can American citizenship be attained and how has immigration policy changed over the years?

- I. Citizenship
 - A. By Birth
 - 1. jus soli—place of birth
 - 2. jus sanguinis—parentage
 - B. By Naturalization
 - 1. individual
 - 2. collective
- II. Immigration
 - A. Regulation
 - 1. by Congress only
 - 2. encouraged when workers needed
 - 3. exclusion based on personal traits
 - B. Quotas
 - 1. number limits based on country of origin
 - 2. favored northern and western Europe
 - 3. Immigration Act of 1965—limit not based on country
 - C. Present Policies
 - 1. Immigration Act of 1990 increased quota
 - 2. preference to family members
 - 3. preference to aliens with needed skills
 - D. Undocumented Aliens
 - 1. enter illegally (or legally and overstay)
 - 2. often hired at substandard pay
 - 3. strain public services
 - 4. Immigration Reform and Control Act of 1986—amnesty; crime to hire illegals
 - 5. Illegal Immigration Restrictions Act of 1996—deportation easier; public services restricted

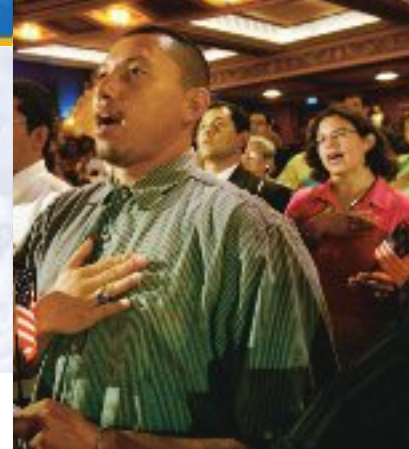
SKILLS DEVELOPMENT

DRAW INFERENCES AND CONCLUSIONS

Before students research immigration issues and prepare arguments for and against, you may want to review information on drawing inferences and conclusions in the Skills Handbook, p. S19.

SECTION 4

American Citizenship



Guiding Question

How can American citizenship be attained and how has immigration policy changed over the years?

Use an outline like the one below to take notes on the section.

- I. Citizenship
 - A. By Birth
 - 1. _____
 - 2. _____
 - B. _____
 - C. _____
- II. Immigration

Political Dictionary

- citizen
- jus soli
- jus sanguinis
- naturalization
- alien
- expatriation
- denaturalization
- deportation

Objectives

1. Describe how people become American citizens by birth and by naturalization.
2. Explain how an American can lose his or her citizenship.
3. Illustrate how the United States is a nation of immigrants.
4. Compare and contrast the status of undocumented aliens and legal immigrants.

Image Above: New citizens take the oath during a naturalization ceremony in Miami, Florida.

Citizenship is the badge of membership in a political society.¹¹ Today, every state in the world has rules by which citizenship is determined. And much can be learned about the basic nature of a government by examining those rules. Who are and who may become citizens? Who are excluded from citizenship, and why?

The Constitution and Citizenship

An American **citizen** is one who owes allegiance to the United States and is entitled to both its protection and the privileges of its laws. As it was originally written, the Constitution referred to both “citizens of the United States” and “citizens of the States.” Neither of those phrases was defined, however. Throughout much of our earlier history, it was generally agreed that national citizenship followed that of the States. That is, a person who was a citizen of, say, Maryland, was also thought to be a citizen of the United States.

Actually, the question was of little importance before the 1860s. Much of the population was the product of recent immigration, and little distinction was made between citizens and those who were not. The Civil War and the adoption of the 13th Amendment in 1865 raised the need for a constitutional definition, however.¹² The 14th Amendment met that need in 1868:

FROM THE CONSTITUTION

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

—14th Amendment, Section 1

¹¹ The concept of citizenship—of the free inhabitants of a city—was developed by the ancient Greeks and Romans. It replaced the earlier concept of kinship—of the blood relationships of the family and the tribe—as the basis for community.

¹² In the Dred Scott case (*Scott v. Sandford*) in 1857, the Supreme Court had ruled that neither the States nor the National Government had the power to confer citizenship on African Americans—slave or free. The dispute over that matter was one of the several causes of the Civil War.

Focus on the Basics

FACTS: • A person can become an American citizen either at birth or through the process of naturalization. • Several million Americans have become citizens through naturalization. • Congress has the exclusive power to regulate immigration. • Most immigrants to the United States have come through official channels, but many arrive illegally. • Aliens may be subject to deportation.

CONCEPTS: citizenship

ENDURING UNDERSTANDINGS: • The United States is a nation of immigrants. • As immigration to the United States has surged over the past few decades, record numbers of immigrants have become American citizens. • Current immigration policy is controversial.

Thus, the Constitution declares that a person may become an American citizen in either of two ways: by birth or by naturalization. The feature on page 634 summarizes the means by which American citizenship can be acquired.

Citizenship by Birth

More than 260 million Americans—nearly 90 percent—are citizens simply because they were born in this country. Another several million are also citizens by birth, although they were born outside the United States.

Two basic rules determine citizenship at birth: *jus soli* and *jus sanguinis*. According to *jus soli*—the law of the soil—citizenship is determined by place of birth, by *where* one is born.

Notice that the 14th Amendment awards American citizenship according to the location of one's birth: "All persons born . . . in the United States . . ." Congress has defined the United States to include, for purposes of citizenship, the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands—and all American embassies and all public vessels of the United States, wherever they might be.¹³

Just how broad the 14th Amendment's statement of *jus soli* is can be seen from a leading case on citizenship, *United States v. Wong Kim Ark*, 1898. Wong Kim Ark was born in San Francisco in 1873 to parents who were citizens of China. He made a brief trip to China in 1895.

Upon Wong Kim Ark's return, he was refused entry to the United States by immigration officials at San Francisco. They insisted that the 14th Amendment should not be read so literally as to mean that he had become an American citizen at birth. They declared that he was an alien and so was denied entry by the Chinese Exclusion Act of 1882. The Supreme Court held, however, that under the clear wording of the 14th Amendment, he was indeed a native-born citizen of this country and so not subject to the terms of the Chinese Exclusion Act.

¹³ Until 1924, Native Americans born to tribal members on reservations did not become citizens at birth. They were, instead, wards (persons under legal guardianship) of the government. In that year, Congress finally did grant citizenship to all Native Americans who did not already possess it.

¹⁴ Article I, Section 8, Clause 4.

A very small number of persons who are born *physically* in the United States do not in fact become citizens at birth. They are those few who are born not "subject to the jurisdiction of the United States"—for example, children born to foreign diplomatic officials.

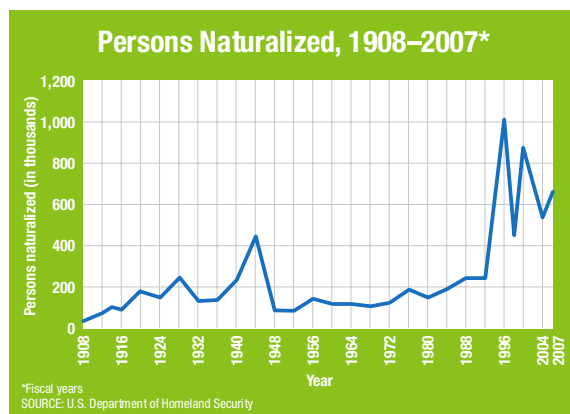
According to *jus sanguinis*, the law of the blood, citizenship at birth may also be determined by parentage, to *whom* one is born. Thus, it is altogether possible for one to become a citizen at birth even when that birth occurs outside the United States. A child born abroad can become a citizen at birth under circumstances set out in the feature on page 634. The 14th Amendment does not provide for *jus sanguinis*. However, Congress first recognized the doctrine in 1790 and its constitutionality has never been challenged.

Citizenship by Naturalization

Naturalization is the legal process by which a person can become a citizen of another country at some time after birth. Congress has the exclusive power to provide for naturalization.¹⁴ No State may do so.

Individual Naturalization Naturalization is most often an individual process, conducted by a court. Generally, any person eligible to

Checkpoint
What does the 14th Amendment say about citizenship?



► **Analyzing Graphs** In what year were the greatest number of persons naturalized? The fewest?

Get Started

LESSON GOALS

Students will . . .

- summarize ways that individuals become citizens in the United States.
- analyze the controversy over immigration in the United States by preparing arguments for and against opinions on the topic.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 5 All-in-One, p. 221) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 5 All-in-One, p. 222)

BELLRINGER

Display Transparency 21F, Naturalization, and write on the board: **1. Which requirement do you think is most difficult to evaluate? 2. What requirements should be added or removed? 3. How did the original Texans become U.S. citizens? 4. Who are the most recent "collective" citizens? Answer in your notebook.**

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

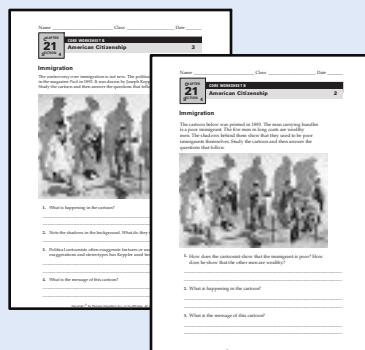
ANALYZE LINE GRAPH

Have students study the graph "Persons Naturalized, 1908–2006" in their textbook. Ask students to use their knowledge of history to explain the spikes, dips, and other trends in the graph. (For example, a spike occurs after World War I ends in 1918; immigration dips during the Great Depression of the 1930s; and it spikes again after World War II ends in 1945.) Have students note the spike in the 1990s, which resulted from the naturalization of some 1 million undocumented aliens who became legalized under the Immigration and Reform Control Act of 1986.

Differentiated Resources

The following resources are located in the All-in-One, Unit 5, Chapter 21, Section 4:

- L3** Reading Comprehension Worksheet (p. 221)
- L2** Reading Comprehension Worksheet (p. 222)
- L3** Core Worksheet A (p. 223)
- L3 L2** Core Worksheets B (pp. 225, 226)
- L3** Quiz A (p. 227)
- L2** Quiz B (p. 228)
- L3** Chapter Test A (p. 233)
- L2** Chapter Test B (p. 236)



Answers

Checkpoint that any person born in the U.S. or naturalized becomes a U.S. citizen

Analyzing Graphs 1996; 1908

Acquiring Citizenship

Most Americans acquire citizenship at birth. *How else can one acquire American citizenship?*



Birth

Jus Soli: Law of Soil

- A child becomes an American citizen if born in the United States, Puerto Rico, Guam, Virgin Islands, Northern Mariana Islands, any U.S. embassy, or aboard a U.S. public vessel anywhere in the world.

Jus Sanguinis: Law of Blood

A child born to an American citizen on foreign soil becomes a citizen if:

- both parents are American citizens, and at least one has lived in the United States or an American territory at some time.
- one parent is an American citizen who has lived in the U.S. for at least 5 years, 2 of them after age 14, and the child has lived in the U.S. continuously for at least 5 years between the ages of 14 and 28.

Naturalization

Individually

- Naturalization of both parents (one parent if divorced or the other is deceased) automatically naturalizes children under age 16 who reside in the U.S. Adopted children born abroad are automatically naturalized if under age 18 when adoption becomes final.

Collectively

- Collective naturalization—when entire groups are naturalized—usually occurs by treaty or by act or joint resolution of Congress.

SHARE BELLRINGER ANSWERS

Have students share their Bellringer answers. (1. *possible answer: evaluating whether someone is “of good moral character”*; 2. *Answers will vary. Direct students to consider adding education or skills requirements.* 3. *by a joint resolution of Congress in 1845*; 4. *citizens of the Northern Mariana Islands*)

L2 ELL Differentiate Ask students to provide synonyms for the word *renounce* (give up, reject, relinquish, disown).

L2 Differentiate Have students list characteristics of a person “of good moral character.” Write these on the board. Then ask students to rate the characteristics from “most important” to “least important” and explain their ratings.

DISCUSS ACQUIRING CITIZENSHIP

Review the ways to gain citizenship. Ask: **What are two ways to acquire citizenship?** (*by birth and by naturalization*) **In what two ways can a person become a citizen by birth?** (*jus soli: citizenship is determined by where one is born; jus sanguinis: citizenship is determined by to whom one is born*)

Now display Transparency 21F (Bellringer) again and ask: **What are the various ways groups have become collectively naturalized in the United States?** (*through treaties, a joint resolution of Congress, acts of Congress, and a constitutional amendment*)

enter the United States as an immigrant may become a naturalized citizen. Hundreds of thousands of aliens are now naturalized each year. An **alien** is a citizen of a foreign state who lives in this country.

The U.S. Citizenship and Immigration Services in the Department of Homeland Security investigates each applicant, and then reports its findings to the judge with whom a petition for naturalization has been filed. If the judge is satisfied, an oath or affirmation of citizenship is administered in open court.

Collective Naturalization At various times, entire groups have been naturalized *en masse*. This has most often happened when the United States has acquired new territory. Those living in the areas involved were naturalized by a treaty or by an act or a joint resolution passed by Congress.

The largest single instance of collective naturalization came with the ratification of the 14th Amendment, however. The most recent instance occurred in 1977, when Congress gave citizenship to the more than 16,000 native-born residents of the Northern Mariana Islands.

Loss of Citizenship

Although it rarely happens, every American citizen, whether native-born or naturalized, has the right to renounce—voluntarily abandon—his or her citizenship. **Expatriation** is the legal process by which a loss of citizenship occurs.

The Supreme Court has several times held that the Constitution prohibits automatic expatriation. That is, Congress cannot take away a person’s citizenship for something he or she has done. Thus, actions such

petition
n. formal request,
application

Background

EXPATRIATION Any party claiming that a person has abandoned his U.S. citizenship must establish three elements. First, the person must have taken one of the acts of expatriation stated by law, such as “obtaining naturalization in” or “taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state” after reaching the age of 18, “entering, or serving in, the armed forces of a foreign state . . . engaged in hostilities against the United States,” or formal renunciation before an appropriate United States official. Second, he must have acted “voluntarily.” Third, he must have acted “with the intention of relinquishing United States nationality.” An individual who voluntarily “enter[s], or serve[s] in, the armed forces of a foreign state” may be expatriated, “if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer.”

Answers

Acquiring Citizenship through naturalization, either individually or collectively

as committing a crime, voting in a foreign election, or serving in the armed forces of another country are not grounds for automatic expatriation.¹⁵

Naturalized citizens can lose their citizenship involuntarily. However, this process—**denaturalization**—can occur only by court order and only after it has been shown that the person became an American citizen by fraud or deception.

A person can neither gain nor lose American citizenship by marriage. The only significant effect that marriage has is to shorten the time required for the naturalization of an alien who marries an American citizen.

A Nation of Immigrants

We are a nation of immigrants. Except for Native Americans—and even they may be the descendants of earlier immigrants—all of us have come here from abroad or are descended from those who did.

Regulation of Immigration Congress has the exclusive power to regulate the crossing of this nation's borders, both inward (immigration) and outward (emigration). It alone has the power to decide who may be admitted to the country and under what conditions. In an early leading case on the point, the Court ruled that the power of the United States to "exclude aliens from its territory is . . . not open to controversy," *Chae Chan Ping v. United States*, 1889. The States have no power in the field, *The Passenger Cases*, 1849.

There were only some 2.5 million people in the United States when independence was declared in 1776. Since then, the population has grown more than a hundredfold, to well over 300 million today. That extraordinary population growth has come from two sources: births and immigration. Some 70 million immigrants have come here since 1820, the year when such figures were first recorded.

Congress made no serious attempt to regulate immigration for more than a century after

independence. As long as land was plentiful and expanding industry demanded more and still more workers, immigration was actively encouraged.

By 1890, however, the open frontier was a thing of the past, and labor was no longer in short supply. Then, too, the major source of immigration had shifted. Until the 1880s, most immigrants had come from the countries of northern and western Europe. The "new immigration" from the 1880s onward came mostly from southern and eastern Europe. All these factors combined to bring major changes in the traditional policy of encouraging immigration. Ultimately, the policy was reversed.

Congress placed the first major restrictions on immigration with the passage of the Chinese Exclusion Act in 1882. At the same time, it barred the entry of convicts, "lunatics," paupers, and others likely to become public charges. Over the next several years, a long list of "undesirables" was added to the law. Thus, contract laborers were excluded in 1885, immoral persons and anarchists in 1903, and illiterates in 1917. By 1920, more than 30 groups were denied admission on the basis of personal traits.

The tide of newcomers continued to mount, however. In the 10 years from 1905 through 1914, an average of more than a million persons, most of them from southern and eastern Europe, came to this country each year.

Quotas Congress responded to pressure for tighter regulation by adding quantitative limits (numerical ceilings) to the qualitative restrictions (personal characteristics) already in place. The Immigration Acts of 1921 and 1924 and the National Origins Act of 1929 assigned each country in Europe a quota—a limit on the number of immigrants who could enter the United States from that country each year. Altogether, only 150,000 quota immigrants could be admitted in any one year.

The quotas were purposely drawn to favor northern and western Europe. The quota system was not applied to the Western Hemisphere, but immigration from Asia, Africa, and elsewhere was generally prohibited.

Checkpoint
When and why did Congress attempt to regulate immigration?

TAKE A CITIZENSHIP TEST

Distribute the Chapter 21 Section 4 Core Worksheet A (Unit 5 All-in-One, p. 223), which includes questions from the U.S. Citizenship and Immigration Services (USCIS) test that individuals take as part of the process of becoming an American citizen. Have students answer as many questions as they can in ten minutes. Quickly review the answers. Then ask: **Do you think any of the questions are unusual or difficult? Which ones? What is the general focus of most of the questions the USCIS thinks every new citizen should know? (citizenship, civic rights and responsibilities) What questions would you add to the test?**

Name _____ Class _____ Date _____

CHAPTER 21 SECTION 4	CORE WORKSHEET A American Citizenship	3
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In 2008, the Department of U.S. Citizenship and Immigration Services (USCIS) implemented a new citizenship test. Of its 100 questions, 38 are listed below. Answer the questions as quickly as you can.

1. What does the Constitution do?
2. The idea of self-government is in the first three words of the Constitution. What are these words?
3. What do we call the first ten amendments to the Constitution?
4. What is one right or freedom from the First Amendment?
5. How many amendments does the Constitution have?
6. What are two rights in the Declaration of Independence?
7. What is the economic system in the United States?
8. What is the "rule of law"?
9. What stops one branch of government from becoming too powerful?
10. Who makes federal laws?
11. How many U.S. Senators are there?
12. Who is one of your state's U.S. Senators?
13. The House of Representatives has how many voting members?
14. Name your U.S. Representative.
15. Why do some states have more Representatives than other states?
16. If both the President and the Vice President can no longer serve, who becomes President?

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L3 Differentiate Ask: **Why is it important that new citizens know about and understand U.S. history and government?**

Debate

Have students debate the following statement: **Loss of U.S. citizenship should be a penalty in the American system of justice.**

Have students provide reasons for and against using the threat of losing one's citizenship as a punishment for criminal acts. In addition, students should note which acts would warrant loss of citizenship.

Answers

Checkpoint By 1890, the open frontier was gone and labor was no longer in short supply. New immigrants were coming mostly from southern and eastern Europe. The Chinese Exclusion Act was passed in 1882 to restrict Chinese immigrants. Other "undesirables" were added to the law based on personal traits. In the 1920s, immigration was restricted to favor people from northern and western Europe.

¹⁵ A person convicted of a federal or a State crime may lose some of the privileges of citizenship, however, either temporarily or permanently—for example, the right to travel freely or to vote or hold public office.

Tell students to go to the Audio Tour to hear where immigrants settle in the United States.

UNDERSTAND IMMIGRATION ARGUMENTS

In this activity, students will gain an understanding of why immigration is so controversial. Have students work in pairs to research the opinions about immigration listed below. Pairs should write at least three arguments supporting the opinion and three refuting it. Have pairs share their arguments with the class. Point out that the opinions and arguments are similar to discussions that take place in Congress.

- America should more effectively militarize its borders to keep undocumented immigrants out.
- Quotas limiting the number of people that may enter the United States should be lifted.
- Undocumented immigrants are necessary to do the jobs that Americans do not want to do.
- Amnesty should be given to immigrants who have been in the country illegally for five years.
- Granting permanent legal status to undocumented immigrants who attend two years of college or military service is wasting American money.
- Harsher immigration policies are needed in the United States to fight terrorism.
- Refugees and others seeking asylum should have to provide evidence of the situation in the foreign countries they are fleeing.

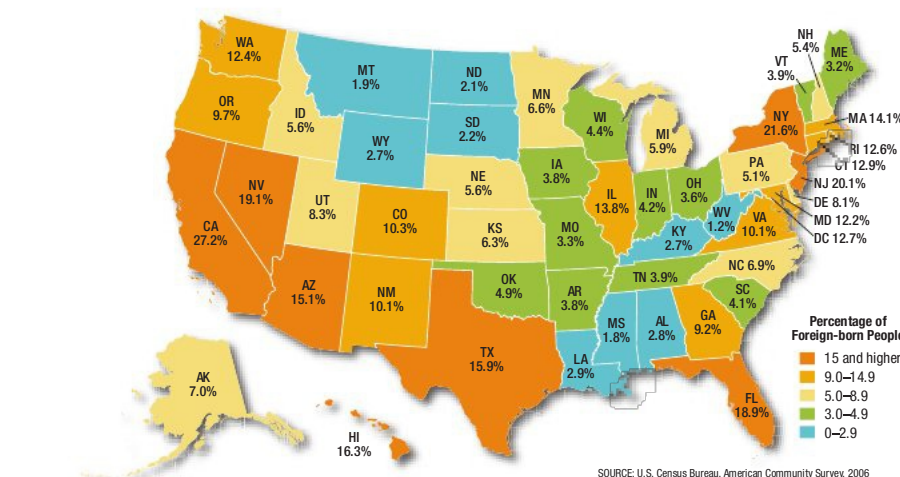
Immigrants in the U.S.



Audio Tour

Listen to an audio guided tour of the map at PearsonSuccessNet.com

► **Analyzing Maps** The Immigration Act of 1990 allows 675,000 immigrants to enter the U.S. each year. The percentage of foreign-born people living in each State in 2006 ranged from less than 2 percent to more than 25 percent. **Which States have the largest immigrant populations?**



Checkpoint

What happened to the country-based quota system?

In 1952, Congress passed yet another basic law, the Immigration and Nationality Act. That statute modified the quota system, extending it to include every country outside the Western Hemisphere.

Congress finally eliminated the country-based quota system in the Immigration Act of 1965. That law allowed as many as 270,000 immigrants to enter the United States each year, without regard to race, nationality, or country of origin. The 1965 law gave special preference to immediate relatives of American citizens or of aliens legally residing in this country.

Present Immigration Policies Today, the Immigration Act of 1990 governs the admission of aliens to the United States. Like its predecessors, it was adopted only after years of intense debate, and many of its provisions are the subject of continuing controversy.

The 1990 law provided for a substantial increase in the number of immigrants

who may enter the United States each year. The annual ceiling is now set at 675,000. It also continues the family-preference policy first put in place in 1965; at least one third of those persons admitted under its terms must be the close relatives of either American citizens or resident aliens. Those immigrants who have occupational talents in short supply in the United States (notably, highly skilled researchers, engineers, and scientists) also receive special preference.

Only those aliens who can qualify for citizenship can be admitted as immigrants. The law's list of "excludable aliens"—those barred because of some personal characteristic—is extensive. Among those excluded are: criminals (including suspected terrorists), persons with communicable diseases, drug abusers and addicts, illiterates, and mentally disturbed persons who might pose a threat to the safety of others.

Background

DUAL CITIZENSHIP Dual citizenship has become much more common in recent years. Although the U.S. State Department does not officially recognize dual citizenship, it does not specifically prohibit it under some circumstances. There are certain rules for becoming a legal citizen of the United States and another country. The most basic rule is that a person who has United States citizenship by birth may later apply for citizenship in another country, without losing his or her American citizenship. A naturalized citizen, however, is required to renounce his or her foreign citizenship when granted American citizenship.

Answers

Analyzing Maps California, Nevada, Arizona, Texas, Florida, New York, New Jersey

Checkpoint Congress eliminated it in the Immigration Act of 1965.

Some 20 million persons—nonimmigrants—come here each year for temporary stays. They are mostly tourists, students, and people traveling for business reasons.

Deportation Most of the civil rights set out in the Constitution are guaranteed to “persons,” which covers aliens as well as citizens. In one important respect, however, the status of aliens is altogether unlike that of citizens: Aliens may be subject to **deportation**, a legal process by which aliens are legally required to leave the country.

The Supreme Court has long held that the United States has the same almost-unlimited power to deport aliens as it has to exclude them. In an early major case, the Court ruled that deportation is an inherent power, arising out of the sovereignty of the United States, and that deportation is not criminal punishment, and so does not require a criminal trial, *Fong Yue Ting v. United States*, 1893.

An alien may be deported on any one of several grounds. The most common is illegal entry. Thousands of aliens who enter with false papers, sneak in by ship or plane, or slip across the border at night are caught each year and deported. Many of them are repeat offenders who will soon make yet another attempt to cross the border.

Conviction of any serious crime, federal or State, usually leads to a deportation order. In recent years, several thousand aliens have been expelled on the basis of their criminal records, especially narcotics violators. The war on terrorism has also quickened the pace of deportations. Because deportation is a civil, not a criminal, matter, several constitutional safeguards do not apply—for example, bail and ex post facto laws.

Undocumented Aliens

No one knows just how many undocumented aliens reside in the United States today. Best estimates put their total at about 12 million.

The number of undocumented aliens is increasing by at least half a million per year. Most of them enter the country by slipping across the Mexican or Canadian borders, usually at night. Some come with forged papers. Many others are aliens who entered

legally, as nonimmigrants, but then overstayed their legal welcomes.

Well over half of all aliens who are here illegally have come from Mexico; most of the others come from other Latin American countries and from Asia. A majority of the Mexicans stay here only some four to six months a year, working on farms or in other seasonal jobs, and then return home. Most others hope to remain here permanently.

A Troublesome Situation Once here, many of these aliens find it easy to become “invisible,” especially in larger cities, and law-enforcement agencies find it very difficult to locate them. Even so, immigration officials have apprehended more than a million undocumented aliens in each of the last several years. Nearly all are sent home. Most go voluntarily, but some leave only as the result of formal deportation proceedings.

The presence of so many undocumented persons has caused a number of nagging problems. Those problems have grown worse over the past several years and, until recently, not much had been done to solve them.

Consider this: Ever since 1987, it has been illegal for an employer to hire an undocumented alien to perform work anywhere in the United States. Even so, some four million persons who now hold jobs in this country came here illegally. Some employers still hire aliens who are often willing to work for substandard wages and in substandard conditions.

No one knows just how many undocumented aliens have taken jobs on farms or become day laborers. Or how many have become janitors or dishwashers, or seamstresses in sweatshops, or have found other **menial** work. However many they are, their presence has multiplied the burdens of already strained public school systems and welfare services of an increasing number of States, most notably California, Arizona, Texas, and Florida.

Current Law The problems posed by undocumented aliens trouble and divide many different interests in American politics—chief among them labor, farm, business, religious, ethnic, and civil rights organizations. After wrestling with the matter for years,

Checkpoint
For what reasons may a person be deported?

menial
adj unskilled, humble, lowly

Background

BEHIND THE SCENES Three bureaus in the Department of Homeland Security regulate immigration. United States Citizenship and Immigration Services (USCIS) adjudicates applications for benefits and services; United States Immigration and Customs Enforcement (ICE) is the law enforcement arm of the old INS; and United States Customs and Border Protection (CBP) is responsible for inspecting immigrants at entry and for border patrol. These bureaus are working to secure the nation’s borders against both terrorists and undocumented immigrants. Their planned tactics include building fences and other barriers along the borders. Virtual fencing, or radiation detection equipment, sensors, cameras, and other high-tech tools, are being implemented.

TRACE ATTITUDES TOWARD IMMIGRATION

Distribute the Chapter 21 Section 4 Core Worksheet B (Unit 5 All-in-One, p. 225), which shows a political cartoon about attitudes toward immigration in the 1890s. Students will learn that immigration policies were controversial even then. Have students answer the questions and discuss them in class.

Name _____ Class _____ Date _____

CHAPTER
21
SECTION 4

CORE WORKSHEET B
American Citizenship
3

Immigration
The controversy over immigration is not new. The political cartoon below appeared in the magazine *Puck* in 1893. It was drawn by Joseph Keppler, himself an immigrant. Study the cartoon and then answer the questions that follow.

1. What is happening in the cartoon?

2. Note the shadows in the background. What do they symbolize?

3. Political cartoonists often exaggerate features or use stereotypes. What exaggerations and stereotypes has Keppler used here?

4. What is the message of this cartoon?

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L1 L2 Differentiate For these students, distribute the adapted Chapter 21 Section 4 Core Worksheet B (Unit 5 All-in-One, p. 226).

EXTEND THE LESSON

L3 Differentiate Have students interview a relative or a family friend who moved to the United States from another country. Provide students with the following questions to initiate the interviews:

- Do you have any personal stories that capture a sense of your experience?
- Do you believe your experiences were typical?
- How do you feel about television and film portrayals of immigrants’ lives?
- What lesson would you like to convey to members of my generation?

Then have students use their notes from the interview to write a short public-interest piece for a magazine or a newspaper.

L2 Differentiate If students are comfortable discussing their ancestors, chart how many students are first-generation through tenth-generation (or more) Americans.

Answers

Checkpoint illegal entry, conviction of a serious federal or State crime

Assess and Remediate

L3 Have students prepare a citizenship and naturalization handbook that recent immigrants could use to help them prepare for American citizenship. Encourage students to illustrate their handbooks and provide the names and phone numbers of important local government resources. Handbooks should also include a citizenship study guide and test.

L3 Assign the Section 4 Assessment questions.

L3 Quiz A (Unit 5 All-in-One, p. 227)

L2 Quiz B (Unit 5 All-in-One, p. 228)

Have students complete the review activities in the digital lesson presentation and continue their work in the Essential Questions Journal.

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Citizenship requirements (Questions 1, 2, 3, 5)	Have students write ten fill-in-the-blank quiz questions regarding citizenship by birth, citizenship by naturalization, and the loss of citizenship. Then have them exchange and complete one another's quizzes.
Immigration laws and policies (Questions 1, 4, 6)	Have students create an annotated timeline noting immigration policies and laws beginning with the Chinese Exclusion Act of 1882.

Answers

Analyzing Political Cartoons Congress should address the issue because it is not going away.

Assessment Answers

1. by birth if born to a U.S. citizen or if born in the U.S.; by naturalization through the courts or if both parents are naturalized; first major restriction was Chinese Exclusion Act of 1882; by 1920 more than 30 groups denied on basis of personal traits; each European country assigned a quota in the 1920s; quota system eliminated in 1965; annual ceiling now 675,000
2. (a) by birth or naturalization (b) **jus soli**: citizenship determined by where one is born; **jus sanguinis**: citizenship determined by parentage

3. (a) legal process by which a person can become a citizen of another country (b) hundreds of thousands
4. (a) and (b) Answers will vary. (c) possible answers: terrorist activities, helping a country at war with the U.S.
5. (a) made it easier to deport undocumented aliens, toughened penalties for smuggling aliens into this country, prevented undocumented aliens from claiming Social Security benefits or public housing, allowed State welfare agencies to check the legal status of

any alien who applies for any welfare benefit, doubled the size of the Border Patrol (b) and (c) Answers will vary.

QUICK WRITE Students should include specific details about implementing the solution funds needed, time allotment, and so on.

Congress was finally able to pass the Immigration Reform and Control Act of 1986. Then, it enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

The 1986 law did two major things. First, it established a one-year amnesty program under which many undocumented aliens could become legal residents. More than two million aliens used the process to legalize their status. Second, that law made it a crime to hire any person who is in this country illegally. Any employer who knowingly hires an undocumented alien can be fined from \$250

to as much as \$10,000. Repeat offenders can be jailed for up to six months.

The 1996 law made it easier to deport illegal aliens by streamlining the deportation process. It also toughened the penalties for smuggling aliens into this country, prevented undocumented aliens from claiming Social Security or public housing benefits, and allowed State welfare agencies to check the legal status of any alien who applies for any welfare benefit. The statute also doubled the size of the Border Patrol—which is, today, the largest of the several federal law enforcement agencies.

Congress has not been able to enact any meaningful immigration reform legislation for more than a decade now, however. The principal reason for the impasse is a continuing dispute over how best to approach the matter.

Many in and out of Congress insist that securing the nation's borders—stemming the flow of illegal entries—should be the nation's first concern. That thorny matter should be addressed, they say, before anything is done to meet the problems posed by the undocumented aliens already in this country. Many others argue that the need to confront these problems should be put off to another day. In particular, many of them want to make it possible for large numbers of undocumented aliens to become legal residents and, eventually, citizens of the United States.



Analyzing Political Cartoons What is the cartoonist's point of view about the immigration issue?

Essential Questions Journal

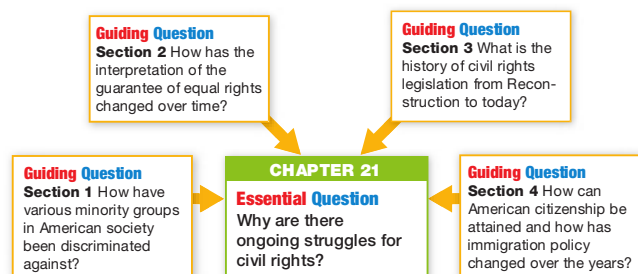
To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

SECTION 4 ASSESSMENT

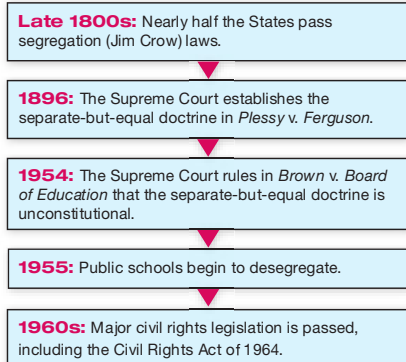
1. **Guiding Question** Use your completed outline to answer this question: How can American citizenship be attained and how has immigration policy changed over the years?
- Key Terms and Comprehension**
2. (a) In what two ways may a person become a U.S. citizen? (b) What is the difference between **jus soli** and **jus sanguinis**?
3. (a) What is **naturalization**? (b) About how many **aliens** are naturalized each year?
- Critical Thinking**
4. **Demonstrate Reasoned Judgment** (a) Should U.S. citizenship be considered a right or a privilege? (b) Do you think citizens by birth should meet the same requirements as those set for naturalized citizens? Why or why not? (c) What actions, if any, do you think should result in an individual's involuntary expatriation?
5. **Identify Alternatives** (a) What did the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provide? (b) Do you think these provisions have been successful? Why or why not? (c) What changes, if any, do you think should be made to the law?

Quick Write

Problem-Solution Essay: Implement the Solution Write a specific proposal or action plan to implement the solution you selected in Section 3. Identify the steps needed to solve the problem, and then write an outline of your solution.



Segregation in American Society



Affirmative Action



Political Dictionary

heterogeneous p. 612
immigrant p. 612
reservation p. 613
refugee p. 615
assimilation p. 615
rational basis test p. 619
strict scrutiny test p. 619
segregation p. 619
Jim Crow p. 619
separate-but-equal doctrine p. 619
integration p. 620
de jure p. 621
de facto p. 621
affirmative action p. 627
quota p. 628
reverse discrimination p. 628
citizen p. 632
jus soli p. 633
jus sanguinis p. 633
naturalization p. 633
alien p. 634
expatriation p. 634
denaturalization p. 635
deportation p. 637

Have students download the digital resources available at Government on the Go for review and remediation.

STUDY TIPS

Predict Test Questions Predicting with accuracy what will be on a test can lead to more focused studying and better grades. Suggest the following prediction strategies to students: Above all, pay attention to those things the teacher emphasizes in class. If a particular point is repeated; written on the board, on an overhead, or in a Power Point presentation; or appears in a study guide, chances are it will resurface on the test. In addition, suggest that students take note of questions asked by the teacher during class. A review of old tests and quizzes will reveal the types of questions and content the teacher stresses. Advise students to predict both lower- (factual recall) and higher-order (critical thinking) questions. Students can create their own study guide by writing a few possible questions after every class.

ASSESSMENT AT A GLANCE

Tests and Quizzes

Section Assessments
Section Quizzes A and B, Unit 5 **All-in-One**
Chapter Assessment
Chapter Tests A and B, Unit 5 **All-in-One**
Document-Based Assessment
Progress Monitoring Online
ExamView Test Bank

Performance Assessment

Essential Questions Journal
Debate, p. 635
Assessment Rubrics, **All-in-One**

For More Information

To learn more about civil rights, refer to these sources or assign them to students:

- L1 Johnson, Troy R.** *Red Power: The Native American Civil Rights Movement*. Chelsea House Publications, 2007.
- L2 Friedman, Lauri S., ed.** *Discrimination (Issues That Concern You)*. Greenhaven Press, 2007.
- L3 McNeese, Tim.** *The Civil Rights Movement: Striving for Justice*. Chelsea House Publications, 2007.
- L4 Kellough, J. Edward.** *Understanding Affirmative Action: Politics, Discrimination, and the Search for Justice*. Georgetown University Press, 2006.

Chapter Assessment

COMPREHENSION AND CRITICAL THINKING

SECTION 1

1. (a) It is made up of a mix of races and nationalities. (b) In colonial times, 80 percent of the population was white; 20 percent African American. Today the ethnic composition includes many nationalities, with whites making up about 65 percent of the population. (c) Hispanic Americans and Asian Americans
2. (a) by providing financial assistance to educational programs for Native American children and adults (b) Answers will vary.
3. (a) 1850s to 1860s; to work as contract laborers in mines and on railroads (b) Chinese immigration came to a halt with the Chinese Exclusion Act of 1882. When immigration policies were changed in 1965, Chinese immigration increased dramatically.
4. (a) an invisible but impenetrable barrier that prevents women from rising in the corporate world (b) reverse discrimination (c) The character laments that a male bee cannot obtain the highest position; usually, gender-based discrimination complaints are made by women.

SECTION 2

5. Answers will vary. Possible response: Government may tax smokers. Burglars fall into a criminal classification.
6. (a) to keep African Americans segregated from whites (b) *Plessy v. Ferguson*; that separate facilities for African Americans were equal (c) Answers will vary. Possible response: No. Separate facilities are inherently unequal because separation implies inferiority of those set apart.
7. (a) Possible answers: *Reed v. Reed* struck down a law that gave fathers preference in the administration of children's estates; *Taylor v. Louisiana* forbids States to exclude women from jury duty (b) Students should respond to the Court's gender classifications that gender-based laws must be (1) intended to serve an "important governmental objective" and (2) are "substantially related" to achieving that goal.

SECTION 3

8. (a) **1964**: outlaws discrimination in a number of areas, including various "public accommodations," in any program that receives any federal funding, or in job-related matters; **1968**: forbids anyone to refuse to sell or rent a dwelling to people

Chapter Assessment

GOVERNMENT ONLINE
Self-Test
To test your understanding of key terms and main ideas, visit
PearsonSuccessNet.com

Comprehension and Critical Thinking

Section 1

1. (a) What does it mean to say that the population of the United States is heterogeneous? (b) How does the ethnic balance in the United States today differ from that of colonial times? (c) Which ethnic groups are experiencing the most rapid population growth?
2. (a) How did the Indian Education Act of 1972 attempt to reduce poverty on and near reservations? (b) Do you think that laws can fix the damage done to Native Americans? Why or why not?
3. (a) When and why did Asians first come to the United States? (b) How did Asian immigration change after 1882? After 1965?
4. **Analyze Political Cartoons** Study the cartoon below.
(a) What does "glass ceiling" mean? (b) What form of discrimination is targeted by this cartoon? (c) How does the cartoon reverse the usual situation?



Section 2

5. Cite an example of what you consider to be reasonable government discrimination.

Apply What You've Learned

13. **Essential Question Activity** Research major civil rights leaders in the United States, looking particularly for information on their ideals, struggles, and successes. Jot down notes as you work.
14. **Essential Question Assessment** Based on your research and the content you have learned in this chapter, create a timeline that helps to answer the Essential

Question: **Why are there ongoing struggles for civil rights?** Your timeline should include civil rights legislation and court cases, as well as quotes from famous civil rights leaders.

Essential Questions Journal To respond to the chapter Essential Question, go to your **Essential Questions Journal**.

6. (a) What was the intent of Jim Crow laws? (b) What landmark Supreme Court case upheld Jim Crow laws, and on what basis? (c) Do you think facilities can be "separate but equal"? Why or why not?
7. (a) Cite two cases in which the Supreme Court found sex-based distinctions to be unconstitutional. (b) Do you think the parameters that the Supreme Court uses when ruling on laws regarding the treatment of men and women are fair? Explain.

Section 3

8. (a) What do the Civil Rights Acts of 1964 and 1968 prohibit? (b) How was enforcement of the 1968 act given added strength?
9. (a) What was the first major affirmative action case ruled on by the Supreme Court? (b) How did the Supreme Court rule in the case? (c) What arguments do critics use when they claim that affirmative action is unconstitutional?

Section 4

10. (a) How does the 14th Amendment define citizenship? (b) In what circumstances may a child born abroad become an American citizen at birth?
11. (a) Why was immigration restricted in the 1880s and again in the 1920s? (b) Outline present immigration policy. (c) Who is excluded from entering the United States today?

Writing About Government

12. Use your Quick Write exercises from each Section Assessment to write a problem-solution essay about the topic you selected in Section 1. Begin with an interesting detail that grabs readers' attention, then explain the problem. Describe the pros and cons of two solutions, using supporting facts and details to outline the steps of what you consider to be the best proposal. Proofread and revise your rough draft into final manuscript. See pp. S3-S5 in the Skills Handbook.

on grounds of race, color, religion, national origin, sex, disability, or whether they have children (b) The Justice Department was given authority to bring criminal charges against those who violate its terms.

9. (a) *Regents of the University of California v. Bakke* (b) It held that *Bakke* had been denied equal protection and should be admitted to the medical school. (c) Critics say that the Constitution requires all public policies to be "color blind."

SECTION 4

10. (a) as "all persons born or naturalized

in the United States and subject to the jurisdiction thereof" (b) if both parents are American citizens, and at least one has lived in the United States or an American territory at some time; or if one parent is an American citizen who has lived in the United States for at least 5 years, 2 of them after age 14, and the child has lived in the United States continuously for at least 5 years between the ages of 14 and 28

11. (a) In the 1880s, the open frontier was gone and labor was no longer in short supply, and new immigrants were coming mostly from southern and eastern Europe.

Document-Based Assessment

CHAPTER 21

Liberty, Equality, and Justice

"All men are created equal" were empty words for African Americans who faced de jure segregation in the South and de facto segregation in the North. These documents show that Dr. Martin Luther King, Jr., who emerged as the leader of the civil rights movement, inspired Americans to revive the civil rights struggle.

Document 1

Section 1 That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

—Virginia Declaration of Rights, 1776

Document 2

I say to you today, my friends, so even though we face the difficulties of today and tomorrow, I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: 'We hold these truths to be self-evident: that all men are created equal.'

I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood. . . .

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

—Martin Luther King, Jr., "I Have a Dream," August 28, 1963

Document 3



Document 4

Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial 'outside agitator' idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.

—Martin Luther King, Jr., "Letter From Birmingham Jail," April 16, 1963

Use your knowledge of civil rights and Documents 1–4 to answer the following questions.

- Which statement best summarizes Document 4?
 - Never stop fighting for your rights.
 - We are all afflicted by injustice.
 - Search your heart for the truth.
 - All Americans should enjoy happiness and safety.
- According to Document 1, what are the inherent rights of the American people?
- From which founding document does King quote in Document 2?
- What method of protest is illustrated in Document 3?
- Pull It Together** What is the common thread that is woven through these documents? Explain.




DOCUMENT-BASED ASSESSMENT

- B
- life, liberty, property, happiness, and safety
- the Declaration of Independence
- nonviolent or peaceful picketing
- All Americans are inherently equal, and all should receive equal justice and liberty.

L2 Differentiate Students use all the documents on the page to support their thesis.

L3 Differentiate Students include additional information available online at **PearsonSuccessNet.com**.

L4 Differentiate Students use materials from the textbook, the online information at **PearsonSuccessNet.com**, and do additional research to support their views.

 **Go Online to PearsonSuccessNet.com** for a student rubric and extra documents.

In the 1920s, immigration was restricted to favor people from northern and western Europe. **(b)** The annual ceiling is set at 675,000 immigrants. Relatives of American citizens or resident aliens and immigrants with needed occupational talents are given priority. **(c)** criminals, suspected terrorists, persons with communicable diseases, drug abusers and addicts, illiterates, and mentally disturbed persons who might pose a threat to the safety of others

WRITING ABOUT GOVERNMENT

12. Students' essays should show evidence

that they have researched pros and cons to plan and organize their steps toward solutions. A solid essay will utilize this research, with paragraphs organized by main ideas and supporting details. If students need help, guide them during the planning stage, using questions to draw out details for their solutions.

APPLY WHAT YOU'VE LEARNED

13. Students' notecards should include civil rights leaders of various races, ethnicities, and gender. Encourage students to locate and read the complete text of "Letter From

Birmingham Jail" by Martin Luther King, Jr.

14. Students should scan the chapter for important civil rights legislation. Timelines should include brief descriptions of each law, how it was decided, and how it relates to other laws on the timeline.

ANSWERS TO ESSENTIAL QUESTION WARMUP

Before assigning these questions, distribute the Rubric for Assessing a Writing Assignment (Unit 5 All-in-One, p. 242). Use the criteria and the guidelines below to grade students' answers to the Essential Question Warmup questions. Then send students to the **Essential Questions Journal** to answer the unit Essential Question.

1. According to this quote from *The Federalist* No. 78, Hamilton believed that the role of the judicial branch was to define and interpret the laws.
2. To answer this question successfully, students must demonstrate that they understand the premise of constitutionality. They will also make a clear statement of position and defend it with evidence.
3. A good answer will articulate an opinion about the role of the judicial branch in settling disputes related to new technology and situations that the Framers could not have foreseen when the Constitution was written. It will offer concrete examples to support the thesis.
4. To answer this question successfully, students must state a position on whether judges should be guided by personal views and support that position with evidence and examples.

Essential Question

What should be the role of the judicial branch?

Whether the role of the judicial branch should be to make law, apply law, or explain the law has been debated throughout history. The following examples each offer a perspective on the answer.

ON JUDICIAL ACTIVISM:

We want courts to settle the question of whether someone has exceeded the limits set by the law. And we want judges to be free of essential dependence upon the wielders of power so that they can do what they are supposed to do without being intimidated.

—Joseph Tussman, *Judicial Activism and the Rule of Law—Toward a Theory of Selective Intervention*

ON THE IMPLICATIONS OF LAWS WITHOUT COURTS:

Laws are dead letters without courts to expound and define their true meaning and operation.

—Alexander Hamilton, *The Federalist* No. 78

ON HOW JUSTICES RULE:



Essential Question Warmup

Throughout this unit, you studied the judicial branch. Use what you have learned and the quotations and opinions above to answer the following questions. Then go to your **Essential Questions Journal**.

1. What did Hamilton think should be the role of the judicial branch?
2. Are all laws completely constitutional or unconstitutional?

3. Should the role of the judicial branch change to adapt to changing times? Explain.
4. Should judges allow their personal views to guide their decisions? Why or why not?

Essential Questions Journal

To continue to build a response to the unit Essential Question, go to your **Essential Questions Journal**.

Assessment Resources

Unit 5 AYP Monitoring Assessment
ExamView Test Bank CD-ROM
SuccessTracker Assessment
Online Student Self-Tests
Chapter Tests
Section Quizzes
Chapter-level Document-Based Assessment

In This Unit

Chapter 22:
Comparative
Political Systems

Chapter 23:
Comparative
Economic Systems

Photo: Russian Prime Minister Vladimir Putin meets with President Hu Jintao of China in Moscow, Russia.

Essential Questions Journal

To begin to build a response to the chapter Essential Question, go to your Essential Questions Journal.

Unit 6 Comparative Political and Economic Systems

Essential Question How should a government meet the needs of its people?

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ESSENTIAL QUESTION PERSPECTIVES

Essential questions frame each unit and chapter of study, asking students to consider big ideas about government. The question for this unit—**How should a government meet the needs of its people?**—demands that students ask further questions. How should a government identify and define the people's needs? Is there a difference between political needs and economic needs? What should be the balance between meeting needs and allowing the market to work? How do governments measure their success in meeting its people's needs?

To begin this unit, assign the Unit 6 Warmup Activity on page 185 of the **Essential Questions Journal**. This will help students start to consider their position on the **Unit 6 Essential Question: How should a government meet the needs of its people?**

Show the **Unit 6 American Government Essential Questions Video** to help students begin thinking about the unit Essential Question and designate a classroom bulletin board for students to post news articles related to the unit Essential Question. Use the Conversation Wall strategy (p. T27) to encourage students to post articles and comments on other students' postings.

Later, students will further explore the chapter-level essential questions:

Chapter 22: How should you measure different governments?

Chapter 23: To what extent should governments participate in the economy?

Use the **Essential Questions Journal** throughout the program to help students consider these and other big ideas about government.

Government Online Resources

Government Online Teacher Center at **PearsonSuccessNet.com** includes

- Online Teacher's Edition with lesson planner and lecture notes
- Teacher's Resource Library with All-in-One Resources, Color Transparencies, Adequate Yearly Progress Monitoring, and an alternative lesson plan for each chapter
- SuccessTracker Assessment

Government Online Student Center at **PearsonSuccessNet.com** includes

- Interactive textbook with audio
- American Government Essential Questions Video
- Chapter-level WebQuests
- Guided Audio Tours and Interactivities
- Student Self-Tests

Introduce the Chapter

Essential Questions:

UNIT 6

How should a government meet the needs of its people?

CHAPTER 22

How should you measure different governments?

ACTIVATE PRIOR KNOWLEDGE

Have students examine the image and quotation on these pages. Ask: **What form of government does China have? (Communist) Based on the quotation, do you think Winston Churchill would consider China's government effective? Explain.** (*No. The quote suggests that Churchill considers democracy more effective than communism.*) In this chapter, students will learn about democracy: its roots, its different forms, and the difficulties of achieving it. Tell students to begin to explore democracy by completing the Chapter 22 Essential Question Warmup activity in their **Essential Questions Journal**. Discuss their responses as a class.

BEFORE READING

L2 ELL Differentiate Chapter 22 Prereading and Vocabulary Worksheet (Unit 6 All-in-One, p. 9)

SUCCESSNET STUDENT AND TEACHER CENTER

Visit **PearsonSuccessNet.com** for downloadable resources that allow students and teachers to connect with government "on the go."

DIGITAL LESSON PRESENTATION

The digital lesson presentation supports the print lesson with activities and summaries of key concepts.

SKILLS DEVELOPMENT

ANALYZE TIMELINES

You may wish to teach analyzing timelines as a distinct skill within Section 1 of this chapter. Use the Chapter 22 Skills Worksheet (Unit 6 All-in-One, p. 21) to help students learn how to analyze timelines. The worksheet asks students to use information about African independence to create a vertical timeline. For L2 and L1 students, assign the adapted Skill Activity (Unit 6 All-in-One, p. 23).

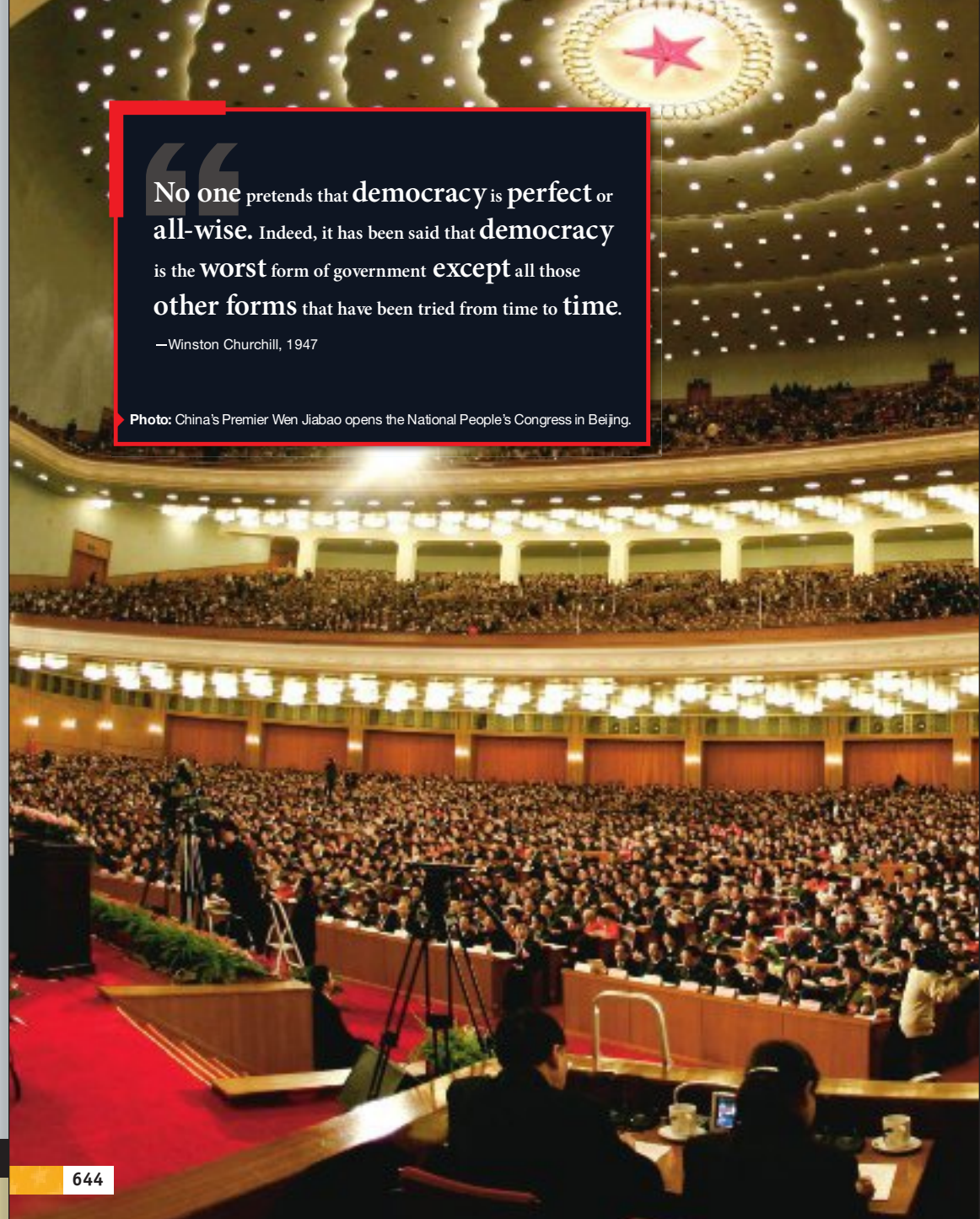


The chapter WebQuest challenges students to answer the chapter Essential Question by asking them about different forms of government.

“No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.”

—Winston Churchill, 1947

Photo: China's Premier Wen Jiabao opens the National People's Congress in Beijing.



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Block Scheduling

BLOCK 1: Teach the Section 1 lesson, and omit the Core Worksheet activity and Extend options. Teach the Section 2 and 3 lessons, omitting the Core Worksheet activity in Section 2 and the Extend options in both sections.

BLOCK 2: Have students create a Venn diagram to compare and contrast the governments of the UK and Mexico.